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ABSTRACT

This final report (March, 1981) of the Select Commission on Immigration and Refugee Policy reviews the provisions and effects of the Immigration and Nationality Act and makes recommendations related to the following areas of study: international issues, undocumented/illegal aliens, the admission of immigrants, phasing in new programs, refugee and mass asylum issues, nonimmigrant aliens, administrative and organizational issues, legal issues, language requirement for naturalization, and treatment of United States territories under U.S. Immigration and Nationality Laws. Appendices include information on recommendations and votes of the Committee, supplementary statements by commissioners, actions required on recommendations, evolution of key provisions relating to immigration, the role of the Federal government on immigration and refugee policy, the United States refugee program, research contracts and papers prepared for the Select Commission, Select Commission briefing and background papers, dates and sites of regional hearings held by the Select Commission, and Select Commission consultations and participants. Fourteen tables supplement demographic data available on immigrants and refugees. (JCD)

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U.S. Immigration Policy and the National Interest

THE FINAL REPORT AND RECOMMENDATIONS OF
THE SELECT COMMISSION ON IMMIGRATION AND REFUGEE POLICY
WITH SUPPLEMENTAL VIEWS BY COMMISSIONERS
MARCH 1, 1981

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Submitted to the Congress and the President of the United States
Pursuant to Public Law 95-412

SELECT COMMISSION ON IMMIGRATION AND REFUGEE POLICY

LETTER OF TRANSMITTAL

March 1, 1981

The Honorable Ronald W. Reagan
President of the United States
The Honorable Strom Thurmond
President pro tempore, United States Senate
The Honorable Thomas P. O'Neill, Jr.
Speaker, U.S. House of Representatives

On behalf of the Select Commission on Immigration and Refugee Policy, I am submitting its final report as directed by Public Law 95-412.

We believe that this report, along with the Commission's separately printed record of hearings, reports and research studies will provide the basis for the development of a sound immigration and refugee policy in the years to come.

As Commissioners, we have been well aware that this is not just another study commission. We have been fully conscious from the start of the need for fundamental reform of our immigration and refugee law and the development of a sound, coherent, responsible policy which serves the interests of the United States and is true to the deepest and best values and traditions of its citizens.

Our work could not have been done without the effective cooperation of many individuals who worked on the staffs of U.S. government agencies and both Houses of Congress, the contributions of dozens of consultants who participated in 21 special consultations and over 700 witnesses who testified at 12 regional public hearings.

I particularly want to thank my fellow Commissioners for their cooperation. And I would like to say at this time that the Commission is deeply indebted and grateful to our Executive Director, Dr. Lawrence H. Fuchs, and to his dedicated colleagues for the intelligent efforts and long hours of work that made this report possible.

Respectfully,

Theodore M. Hesburgh

(Rev.) Theodore M. Hesburgh, C.S.C.
Chairman

MEMBERS

OF THE SELECT COMMISSION ON IMMIGRATION AND REFUGEE POLICY

Appointed by the President of the United States

The Reverend Theodore M. Hesburgh, President, University of Notre Dame[*]
Rose Matsui Ochi, Executive Assistant to the Mayor of Los Angeles
Joaquin Francisco Otero, Vice President, Brotherhood of Railway and Airline Clerks
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Elizabeth Holtzman (D-New York)
Robert McClory (R-Illinois)
Peter W. Rodino, Jr. (D-New Jersey)

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[*] Replaced the Honorable Reubin O'D. Askew on October 11, 1979.

[†] Public Law 95-412 stipulates that the Secretary of State, the Attorney General, the Secretary of Labor and the Secretary of Health and Human Services shall serve on the Select Commission on Immigration and Refugee Policy. The following were members of the Commission but did not participate in its deliberations:

Alexander M. Haig, Secretary of State
William French Smith, Attorney General
Raymond J. Donovan, Secretary of Labor
Richard S. Schweiker, Secretary of Health and Human Services

[‡] Replaced W. Griffin Bell on August 16, 1979.

[§] Replaced Joseph A. Califano, Jr. on August 3, 1979.

[//] Replaced Cyrus R. Vance on May 8, 1980.

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*Currently on staff or on staff for a minimum of six months. This does not apply to consultants.

[†] Replaced Drs. Jasso and Rosenzweig who returned to academic posts July 1980.

[‡] Replaced Ann Bartunek, August 1980.

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Terry Wilkerson, Secretary to the Deputy Director and Special Assistant

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[8] Replaced Kitty I.S. Green

FOREWORD

THE COMMISSION'S AUTHORITY

Public Law 95-412, passed October 5, 1978, established the Select Commission on Immigration and Refugee Policy "to study and evaluate . . . existing laws, policies, and procedures governing the admission of immigrants and refugees to the United States and to make such administrative and legislative recommendations to the President and to the Congress as are appropriate."

In Section 2(d), the Commission was asked to:

(1) Conduct a study and analysis of the effect of the provisions of the Immigration and Nationality Act (and administrative interpretations thereof) on (A) social, economic, and political conditions in the United States; (B) demographic trends; (C) present and projected unemployment in the United States; and (D) the conduct of foreign policy;

(2) Conduct a study and analysis of whether and to what extent the Immigration and Nationality Act should apply to the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, and the other territories and possessions of the United States;

(3) Review, and make recommendations with respect to the numerical limitations (and exemptions therefrom) of the Immigration and Nationality Act on the admission of permanent resident aliens;

(4) Assess the social, economic, political and demographic impact of previous refugee programs and review the criteria for, and numerical limitations on, the admission of refugees to the United States;

(5) Conduct a comprehensive review of the provisions of the Immigration and Nationality Act and make legislative recommendations to simplify and clarify such provisions;

(6) Make semiannual reports to each House of Congress during the period before publication of its final report (described in paragraph (7); and

(7) Make a final report of its findings and recommendations to the President and each House of Congress, which report shall be published not later than March 1, 1980.

WORK OF THE COMMISSION*

To ensure that its administrative and legislative recommendations to the President and Congress address all immigration issues, the Commission has sought the most reflective, authoritative information from individuals, groups and studies through a variety of methods, including social science/legal research (see Appendixes G and H), public hearings and site visits (see Appendix I), and consultations (see Appendix J). The Select Commission has also sought to inform the public of its work and its deliberations by maintaining a public information center, publishing a monthly newsletter and holding seven public meetings.*

COMMISSION RECOMMENDATIONS

On December 6 and 7, 1980 and January 6, 1981 the Select Commission held its final meetings to vote on the proposals which form its recommendations. To prepare for these meetings, the Commission's staff prepared extensive decision memoranda, with analysis of all major public policy questions referenced by the latest research and examples of testimony and analysis at public hearings and consultations. These decision memoranda were prefaced by a single page or two summarizing each decision memorandum and providing Commissioners with a place to vote. Various Commissioners assumed the responsibility for analyzing the options in different areas and for leading the discussion on those topics. Subcommittees also met in an attempt to iron out difficult and controversial issues prior to both the December and January meetings.

Commissioners voted on 74 decision memoranda presented during the course of the meetings on December 6-7 and January 6.† In some cases, votes were taken on individual options while in other cases, the Commissioners voted on a package of proposals. Commissioners voted with the understanding that votes could change during the course of the meetings. Commissioners who passed, abstained or were not in attendance during a vote were permitted to cast votes after the meeting if these votes were received within a precribed time.

Although the Commission voted on a wide range of issues, it was impossible to address every aspect of immigration policy. The absence of a recommendation should not be construed as evidence that the Commission thought an issue unimportant.

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*A full description of the work of the Commission appears in the Second Semi-Annual Report submitted to the Congress on September 1, 1980. The Commission meetings were held on May 9, 1979, October 9, 1979, January 30, 1980, May 7, 1980, June 18, 1980, December 6 and 7, 1980 and January 6, 1981.

†As former Representative Elizabeth Holtzman was no longer a member of the Select Commission on January 6, 1981, there were fifteen, rather than sixteen, voting Commissioners on that date.

Conclusions and Recommendations

A draft of Conclusions and Recommendations based on final votes was circulated to all Commissioners with the understanding that they should submit suggestions for or changes in language to a subcommittee consisting of Commissioners Civiletti, DeConcini and Fish. The final report follows a format and style adopted under the rules of the Commission as implemented by its subcommittee, which called for a succinct reporting of the Commission's recommendations and rationale. Support for majority and minority positions, when three or more Commissioners voted for a position, is put in language which can be derived either from the decision memoranda on which Commissioners voted or the transcript of the discussions concerning the votes. The verbs recommend and believe are used only to reflect a precise Commission vote. Other verbs such as favor, support, or holds the view describe material incorporated from the decision memoranda or the transcript of the Commission's discussions.

Supplemental Statements

Commissioners were invited to submit brief supplemental statements to be appended to this report and 12 have availed themselves of the opportunity. More extensive remarks by Commissioners will be presented to the President and the Congress along with additional staff material before May 1, 1981.

Other Materials

This official report is the first of several volumes of material to be sent to the President and the Congress as a result of the Commission's work. During the sixty-day period in which the Commission will conclude its business, the Commission staff will forward its proposals for specific changes in the Immigration and Nationality Act; a volume of detailed analysis of current immigration issues, including an examination of the historical background of these issues; transcripts of the 12 public hearings and several volumes of contracted research studies, reports of government agencies and briefing papers prepared by the Commission staff.

These additional materials should be of considerable use in providing background for an understanding of the recommendations made by the Commission and of particular assistance to the Congress and the nation as the debate on immigration and refugee policy develops in the months ahead.

EXECUTIVE SUMMARY
RECOMMENDATIONS OF THE
SELECT COMMISSION ON IMMIGRATION AND REFUGEE POLICY

SECTION I. INTERNATIONAL ISSUES

I.A. Better Understanding of International Migration

The Select Commission recommends that the United States continue to work with other nations and principal international organizations that collect information, conduct research and coordinate consultations on migratory flows and the treatment of international migrants, to develop a better understanding of migration issues.

I.B. Revitalization of Existing International Organizations

The Select Commission recommends that the United States initiate discussion through an international conference on ways to revitalize existing institutional arrangements for international cooperation in the handling of migration and refugee problems.

I.C. Expansion of Bilateral Consultations

The Select Commission recommends that the United States expand bilateral consultations with other governments, especially Mexico and other regional neighbors regarding migration.

I.D. The Creation of Regional Mechanisms

The United States should initiate discussions with regional neighbors on the creation of mechanisms to:

- Discuss and make recommendations on ways to promote regional cooperation on the related matters of trade, aid, investment, development and migration;
- Explore additional means of cooperation for effective enforcement of immigration laws;
- Establish means for mutual cooperation for the protection of the human and labor rights of nationals residing in each other's countries;
- Explore the possibility of negotiating a regional convention on forced migration or expulsion of citizens; and

- Consider establishment of a regional authority to work with the U.N. High Commissioner for Refugees and the Intergovernmental Committee on Migration in arranging for the permanent and productive resettlement of asylees who cannot be repatriated to their countries of origin.

SECTION II. UNDOCUMENTED/ILLEGAL ALIENS

II.A. Border and Interior Enforcement

II.A.1. Border Patrol Funding

The Select Commission recommends that Border Patrol funding levels be raised to provide for a substantial increase in the numbers and training of personnel, replacement sensor systems, additional light planes and helicopters and other needed equipment.

II.A.2. Port-of-Entry Inspections

The Select Commission recommends that port-of-entry inspections be enhanced by increasing the number of primary inspectors, instituting a mobile inspections task force and replacing all outstanding border-crossing cards with a counterfeit-resistant card.

II.A.3. The Select Commission recommends that regional border enforcement posts be established to coordinate the work of the Immigration and Naturalization Service, the U.S. Customs Service, the Drug Enforcement Administration and the U.S. Coast Guard in the interdiction of both undocumented/illegal migrants and illicit goods, specifically narcotics.

II.A.4. Enforcement of Current Law

The Select Commission recommends that the law be firmly and consistently enforced against U.S. citizens who aid aliens who do not have valid visas to enter the country.

II.A.5. Nonimmigrant Visa Abuse

The Select Commission recommends that investigations of overstays and student visa abusers be maintained regardless of other investigative priorities.

II.A.6. Nonimmigrant Document Control

The Select Commission recommends that a fully automated system of nonimmigrant document control should be established in the Immigration and Naturalization Service to allow prompt tracking of aliens and to verify their departure. U.S. consular posts of visa issuance should be informed of nondepartures.

II.A.7. Deportation of Undocumented/Illegal Migrants

The Select Commission recommends that deportation and removal of undocumented/illegal migrants should be effected to discourage early return. Adequate funds should be available to maintain high levels of alien apprehension, detention and deportation throughout the year. Where possible, aliens should be required to pay the transportation costs of deportation or removal under safeguards.

II.A.8. Training of INS Officers

The Select Commission recommends high priority be given to the training of Immigration and Naturalization Service officers to familiarize them with the rights of aliens and U.S. citizens and to help them deal with persons of other cultural backgrounds. Further, to protect the rights of those who have entered the United States legally, the Commission also recommends that immigration laws not be selectively enforced in the interior on the basis of race, religion, sex, or national origin.

II.B. Economic Deterrents in the Workplace

II.B.1. Employer Sanctions Legislation

The Select Commission recommends that legislation be passed making it illegal for employers to hire undocumented workers.

II.B.2. Enforcement Efforts in Addition to Employer Sanctions

The Select Commission recommends that the enforcement of existing wage and working standards legislation be increased in conjunction with the enforcement of employer responsibility legislation.

II.C. Legalization

The Select Commission recommends that a program to legalize illegal/undocumented aliens now in the United States be adopted.

II.C.1. Eligibility for Legalization

The Select Commission recommends that eligibility be determined by interrelated measurements of residence--date of entry and length of continuous residence--and by specified groups of excludability that are appropriate to the legalization program.

II.C.2. Maximum Participation in the Legalization Program

The Select Commission recommends that voluntary agencies and community organizations be given a significant role in the legalization program.

II.C.3. Legalization and Enforcement

The Select Commission recommends that legalization begin when appropriate enforcement mechanisms have been instituted.

II.C.4. Unqualified Undocumented/Illegal Aliens

The Select Commission recommends that those who are ineligible for a legalization program be subject to the penalties of the Immigration and Nationality Act if they come to the attention of immigration authorities.

SECTION III. THE ADMISSION OF IMMIGRANTS

III.A. Numbers of Immigrants

III.A.1. Numerical Ceilings on Total Immigrant Admissions

The Select Commission recommends continuing a system where some immigrants are numerically limited but certain others--such as immediate relatives of U.S. citizens and refugees--are exempt from any numerical ceilings.

III.A.2. Numerically Limited Immigration

The Select Commission recommends an annual ceiling of 350,000 numerically limited immigrant visas with an additional 100,000 visas available for the first five years to provide a higher ceiling to allow backlogs to be cleared.

III.B. Goals and Structure

III.B.1. Categories of Immigrants

The Select Commission recommends the separation of the two major types of immigrants--families and independent (nonfamily) immigrants--into distinct admissions categories.

III.C. Family Reunification

The Select Commission recommends that the reunification of families continue to play a major and important role in U.S. immigration policy.

III.C.1. Immediate Relatives of U.S. Citizens

The Select Commission recommends continuing the admission of immediate relatives of U.S. citizens outside of any numerical limitations. This group should be expanded slightly to include not only the spouses, minor children and parents of adult citizens, but also the adult unmarried sons and daughters and grandparents of adult U.S. citizens. In the case of grandparents, petitioning rights for the immigration of relatives do not attach until the petitioner acquires U.S. citizenship.

III.C.2. Spouses and Unmarried Sons and Daughters of Permanent Resident Aliens

The Select Commission recognizes the importance of reunifying spouses and unmarried sons and daughters with their permanent resident alien relatives. A substantial number of visas should be set aside for this group and it should be given top priority in the numerically limited family reunification category.

III.C.3. Married Sons and Daughters of U.S. Citizens

The Select Commission recommends continuing a numerically limited preference for the married sons and daughters of U.S. citizens.

III.C.4. Brothers and Sisters of U.S. Citizens

The Select Commission recommends that the present policy of admitting all brothers and sisters of adult U.S. citizens within the numerical limitations be continued.

III.C.5. Parents of Adult Permanent Residents

The Select Commission recommends including a numerically limited preference for certain parents of adult permanent resident aliens. Such parents must be elderly and have no children living outside the United States.

III.C.6. Country Ceilings

The Select Commission recommends that country ceilings apply to all numerically limited family reunification preferences except to that for the spouses and minor children of permanent resident aliens, who should be admitted on a first-come, first-served basis within a worldwide ceiling set for that preference.

III.C.7. Preference Percentage Allocations

The Select Commission recommends that percentages of the total number of visas set aside for family reunification be assigned to the individual preferences.

III.D. Independent Immigration

The Select Commission recommends that provision should be made in the immigrant admissions system to facilitate the immigration of persons without family ties in the United States.

III.D.1. Special Immigrants

The Select Commission recommends that "special" immigrants remain a numerically exempt group but be placed within the independent category.

III.D.2. Immigrants With Exceptional Qualifications

The Select Commission recognizes the desirability of facilitating the entry of immigrants with exceptional qualifications and recommends that a small, numerically limited category be created within the independent category for this purpose.

III.D.3. Immigrant Investors

The Select Commission recommends creating a small, numerically limited subcategory within the independent category to provide for the immigration of certain investors. The criteria for the entry of investors should be a substantial amount of investment or capacity for investment in dollar terms, substantially greater than the present $40,000 requirement set by regulation.

III.D.4. Retirees

The Select Commission recommends that no special provision be made for immigration of retirees.

III.D.5. Other Independent Immigrants

The Select Commission recommends the creation of a category for qualified independent immigrants other than those of exceptional merit or those who can qualify as investors.

III.D.6. Selection Criteria for Independent Immigrants

The Select Commission believes that specific labor market criteria should be established for the selection of independent immigrants, but is divided over whether the mechanism should be a streamlining and clarification of the present labor certification procedure plus a job offer from a U.S. employer, or a policy under which independent immigrants would be admissible unless the Secretary of Labor ruled that their immigration would be harmful to the U.S. labor market.

III.D.7. Country Ceilings

The Select Commission recommends a fixed-percentage limit to the independent immigration from any one country.

III.E. Flexibility in Immigration Policy

III.E.1. Suggested Mechanism

The Select Commission recommends that ranking members of the House and Senate subcommittees with immigration responsibilities, in consultation with the Departments of State, Justice, and Labor, prepare an annual report on the current domestic and international situations as they relate to U.S. immigration policy.

SECTION IV. PHASING IN NEW PROGRAMS RECOMMENDED BY THE SELECT COMMISSION

The Select Commission recommends a coordinated phasing-in of the major programs it has proposed.

SECTION V. REFUGEE AND MASS FIRST ASYLUM ISSUES

V.A. The Select Commission endorses the provisions of the Refugee Act of 1980 which cover the definition of refugee, the number of visas allocated to refugees and how these numbers are allocated.

V.A.1. Allocation of Refugee Numbers

The Select Commission recommends that the U.S. allocation of refugee numbers include both geographic considerations and specific refugee characteristics. Numbers should be provided--not by statute but in the course of the allocation process itself--for political prisoners, victims of torture and persons under threat of death.

V.B. Mass First Asylum Admissions

V.B.1. Planning for Asylum Emergencies

The Select Commission recommends that an interagency body be established to develop procedures, including contingency plans for opening and managing federal processing centers, for handling possible mass asylum emergencies.

V.B.2. Determining the Legitimacy of Mass Asylum Claims

The Select Commission recommends that mass asylum applicants continue to be required to bear an individualized burden of proof. Group profiles should be developed and used by processing personnel and area experts (see V.B.4.) to determine the legitimacy of individual claims.

V.B.3. Developing and Issuing Group Profiles

The Select Commission recommends that the responsibility for developing and issuing group profiles be given to the U.S. Coordinator for Refugee Affairs.

V.B.4. Asylum Admissions Officers

The Select Commission recommends that the position of asylum admissions officer be created within the Immigration and Naturalization Service. This official should be schooled in the procedures and techniques of eligibility determinations. Area experts should be made available to these processing personnel to provide information on conditions in the source country, facilitating a well-founded basis for asylum determinations.

V.B.5. Asylum Appeals

The Select Commission holds the view that in each case a simple asylum appeal be heard and recommends that the appeal be heard by whatever institution routinely hears other immigration appeals.

V.C. Refugee Resettlement

The Select Commission endorses the overall programs and principles of refugee resettlement but takes note of changes that are needed in the areas of cash and medical assistance programs, strategies for resettlement, programs to promote refugee self-sufficiency and the preparation of refugee sponsors.

V.C.1. State and Local Governments

The Select Commission recommends that state and local governments be involved in planning for initial refugee resettlement and that consideration be given to establishing a federal program of impact aid to minimize the financial impact of refugees on local services.

V.C.2. Refugee Clustering

The Select Commission recommends that refugee clustering be encouraged. Mechanisms should be developed, particularly within the voluntary agency network, to settle ethnic groups of similar backgrounds in the same areas.

V.C.3. Resettlement Benefits

The Select Commission recommends that consideration be given to an extension of federal refugee assistance reimbursement.

V.C.4. Cash-Assistance Programs

The Select Commission recommends that stricter regulations be imposed on the use of cash-assistance programs by refugees.

V.C.5. Medical-Assistance Programs

The Select Commission recommends that medical assistance for refugees should be more effectively separated from cash-assistance programs.

V.C.6. Resettlement Goals

The Select Commission recommends that refugee achievement of self-sufficiency and adjustment to living in the United States be reaffirmed as the goal of resettlement. In pursuance of this goal, "survival" training--the attainment of basic levels of language and vocational skills--and vocational counseling should be emphasized. Sanctions (in the form of termination of support and services) should be imposed on refugees who refuse appropriate job offers, if these sanctions are approved by the voluntary agency responsible for resettlement, the cash-assistance source and, if involved, the employment service.

V.C.7. Sponsors

The Select Commission recommends that improvements in the orientation and preparation of sponsors be promoted.

V.D. Administration of U.S. Refugee and Mass Asylum Policy

V.D.1. Streamlining of Resettlement Agencies

The Select Commission recommends that the Administration, through the office of the Coordinator for Refugees, be directed to examine whether the program of resettlement can be streamlined to make government participation more responsive to the flow of refugees coming to this country. Particular attention should be given to the question of whether excessive bureaucracy has been created, although inadvertently, pursuant to the Refugee Act of 1980.

V.D.2. U.S. Coordinator for Refugee Affairs

The Select Commission recommends that the office of the U.S. Coordinator for Refugee Affairs be moved from the State Department and be placed in the Executive Office of the President.

SECTION VI. NONIMMIGRANT ALIENS

VI.A. Nonimmigrant Adjustment to Immigrant Status

The Select Commission recommends that the present system under which eligible nonimmigrants and other aliens are permitted to adjust their status into all immigrant categories be continued.

VI.B. Foreign Students

VI.B.1. Foreign Student Employment

The Select Commission recommends that the United States retain current restrictions on foreign student employment, but expedite the processing of work authorization requests; unauthorized student employment should be controlled through the measures recommended to curtail other types of illegal employment.

VI.B.2. **Employment of Foreign Student Spouses**

The Select Commission recommends that the spouses of foreign students be eligible to request employment authorization from the Immigration and Naturalization Service under the same conditions that now apply to the spouses of exchange visitors.

VI.B.3 **Subdivision of the Foreign Student Category**

The Select Commission recommends dividing the present all-inclusive F-1 foreign student category into subcategories: a revised F-1 class for foreign students at academic institutions that have foreign student programs and have demonstrated their capacity for responsible foreign student management to the Immigration and Naturalization Service; a revised F-2 class for students at other academic institutions authorized to enroll foreign students that have not yet demonstrated their capacity for responsible foreign student management and a new F-3 class for language or vocational students. An additional F-4 class would be needed for the spouses and children of foreign students.

VI.B.4. **Authorization of Schools to Enroll Foreign Students**

The Select Commission recommends that the responsibility for authorizing schools to enroll foreign students be transferred from the Immigration and Naturalization Service to the Department of Education.

VI.B.5 **Administrative Fines for Delinquent Schools**

The Select Commission recommends establishing a procedure that would allow the Immigration and Naturalization Service to impose administrative fines on schools that neglect or abuse their foreign student responsibilities (for example, failure to inform INS of changes in the enrollment status of foreign students enrolled in their schools).

VI.C. **Tourists and Business Travelers**

VI.C.1. **Visa Waiver for Tourists and Business Travelers from Selected Countries**

The Select Commission recommends that visas be waived for tourists and business travelers from selected countries who visit the United States for short periods of time.

VI.C.2. Improvement in the Processing of Intracompany Transferee Cases

The Select Commission recommends that U.S. consular officers be authorized to approve the petitions required for intracompany transfers.

VI.D. Medical Personnel

VI.D.1. Elimination of the Training Time Limit for Foreign Medical School Graduates

The Select Commission recommends the elimination of the present two- to three-year limit on the residency training of foreign doctors.

VI.D.2. Revision of the Visa Qualifying Exam for Foreign Doctors

The Select Commission recommends that the Visa Qualifying Exam (VQE) be revised to deemphasize the significance of the Exam's Part I on basic biological science.

VI.D.3. Admission of Foreign Nurses as Temporary Workers

The Select Commission recommends that qualified foreign nurses continue to be admitted as temporary workers, but also recommends that efforts be intensified to induce more U.S. nurses who are not currently practicing their professions to do so.

VI.D.4. Screening of Foreign Nurses Applying for Visas

The Select Commission recommends that all foreign nurses who apply for U.S. visas continue to be required to pass the examination of the Commission on Graduates of Foreign Nursing Schools.

VI.E. H-2 Temporary Workers

The Department of Labor should recommend changes in the H-2 program which would improve the fairness of the program to both U.S. workers and employers. Proposed changes should:

- Improve the timeliness of decisions regarding the admission of H-2 workers by streamlining the application process;

- Remove the current economic disincentives to hire U.S. workers by requiring, for example, employers to pay FICA and unemployment insurance for H-2 workers; and maintain the labor certification by the U.S. Department of Labor.

- The Commission believes that government, employers, and unions should cooperate to end the dependence of any industry on a constant supply of H-2 workers.

The above does not exclude a slight expansion of the program.

VI.F. Authority of the Attorney General to Deport Nonimmigrants

The Select Commission recommends that greater statutory authority be given to the Attorney General to institute deportation proceedings against nonimmigrant aliens when there is conviction for an offense subject to sentencing of six months or more.

SECTION VII. ADMINISTRATIVE ISSUES

VII.A. Federal Agency Structure

The Select Commission recommends that the present federal agency structure for administering U.S. immigration and nationality laws be retained with visa issuance and the attendant policy and regulatory mechanisms in the Department of State and domestic operations and the attendant policy and regulatory mechanisms in the Immigration and Naturalization Service of the Department of Justice.

VII.B. Immigration and Naturalization Service

VII.B.1. Service and Enforcement Functions

The Select Commission recommends that all major domestic immigration and nationality operations be retained within the Immigration and Naturalization Service, with clear budgetary and organizational separation of service and enforcement functions.

VII.B.2. Head of the INS

The Select Commission recommends that the head of the Immigration and Naturalization Service be upgraded to director at a level similar to that of the other major agencies within the Department of Justice and report directly to the

VII.B.3. **Professionalism of INS Employees**

The Select Commission recommends the following actions be taken to improve the responsiveness and sensitivity of Immigration and Naturalization Service employees:

- Establish a code of ethics and behavior for all INS employees.
- Upgrade employee training to include meaningful courses at the entry and journeymen levels on ethnic studies and the history and benefits of immigration.
- Promote the recruitment of new employees with foreign language capabilities and the acquisition of foreign language skills in addition to Spanish--in which all officers are now extensively trained--for existing personnel.
- Sensitize employees to the perspectives and needs of the persons with whom they come in contact and encourage INS management to be more sensitive to employee morale by improving pay scales and other conditions of employment.
- Reward meritorious service and sensitivity in conduct of work.
- Continue vigorous investigation of and action against all serious allegations of misfeasance, malfeasance and corruption by INS employees.
- Give officers training to deal with violence and threats of violence.
- Strengthen and formalize the existing mechanism for reviewing administrative complaints, thus permitting the Immigration and Naturalization Service to become more aware of and responsive to the public it serves.
- Make special efforts to recruit and hire minority and women applicants.

VII.C. **Structure for Immigration Hearings and Appeals**

Article I Court

The Select Commission recommends that existing law be amended to create an immigration court under Article I of the U.S. Constitution.

VII.C.2. Resources for Article I Court

The Select Commission urges that the court be provided with the necessary support to reduce existing backlogs.

VII.D. Administrative Naturalization

The Select Commission recommends that naturalization be made an administrative process within the Immigration and Naturalization Service with judicial naturalization permitted when practical and requested. It further recommends that the significance and meaning of the process be preserved by retaining meaningful group ceremonies as the forum for the actual conferring of citizenship.

VII.E. Review of Consular Decisions

The Select Commission recommends that the existing informal review system for consular decisions be continued but improved by enhancing the consular post review mechanism and using the State Department's visa case review and field support process as tools to ensure equity and consistency in consular decisions.

VII.F. Immigration Law Enforcement by State and Local Police

The Select Commission recommends that state and local law enforcement officials be prohibited from apprehending persons on immigration charges, but further recommends that local officials continue to be encouraged to notify the Immigration and Naturalization Service when they suspect a person who has been arrested for a violation unrelated to immigration to be an undocumented/illegal alien.

SECTION VIII. LEGAL ISSUES

VIII.A. Powers of Immigration and Naturalization Officers

VIII.A.1. Temporary Detention for Interrogation

The Select Commission recommends that statutes authorizing Immigration and Naturalization Service enforcement activities for other than activities on the border clearly provide that Immigration and Naturalization Service Officers may temporarily detain a person for interrogation or a brief investigation upon reasonable cause to believe (based upon articulable facts) that the person is unlawfully present in the United States.

VIII.A.2. Arrests With and Without Warrants

The Select Commission recommends that:

- Arrests, effected with or without the authority of a warrant, should be supported by probable cause to believe that the person arrested is an alien unlawfully present in the United States.

- Warrantless arrests should only be made when an INS officer reasonably believes that the person is likely to flee before an arrest warrant can be obtained.

- Arrest warrants may be issued by the Immigration and Naturalization Service District Directors or Deputy District Directors, the heads of suboffices and Assistant District Directors for Investigations acting for the Attorney General.

- Persons arrested outside the border area without a warrant should be taken without unnecessary delay before the Immigration and Naturalization Service District Director, Deputy District Director, head of suboffice or Assistant Director for Investigations acting for the Attorney General or before an immigration judge who will determine if sufficient evidence exists to support the initiation of deportation proceedings. With respect to arrests at the border, persons arrested without a warrant should be taken without unnecessary delay before an immigration judge or a supervisory responsible Immigration and Naturalization Service official who will determine whether sufficient evidence exists to support the initiation of deportation proceedings.

VIII.A.3. Searches for Persons and Evidence

The Select Commission recommends that the Immigration and Nationality Act include provisions authorizing Immigration and Naturalization Service officers to conduct searches:

- With probable cause either under the authority of judicial warrants for property and persons, or in exigent circumstances;

- Upon the receipt of voluntary consent at places other than residences;

- When searches pursuant to applicable law are conducted incident to a lawful arrest; or

- At the border.

VIII.A.4. Evidence Illegally Obtained

The Select Commission recommends that enforcement officials using illegal means to obtain evidence should be penalized. The evidence thus obtained should not be excluded from consideration in deportation cases.

VIII.B. Right to Counsel

VIII.B.1. The Right to Counsel and Notification of that Right

The Select Commission recommends that the right to counsel and notification of that right be mandated at the time of exclusion and deportation hearings and when petitions for benefits under the INA are adjudicated.

VIII.B.2. Counsel at Government Expense

The Select Commission recommends amending the current law to provide counsel at government expense only to permanent resident aliens in deportation or exclusion hearings, and only when those aliens cannot afford legal counsel and alternative sources of free legal services are not available.

VIII.C. Limits on Deportation

VIII.C.1. Revision of Section 244 of the Immigration and Nationality Act

The Select Commission recommends that the words "extreme hardship" in Section 244 of the Immigration and Nationality Act be changed to "hardship." And that the reference to congressional confirmation of suspension of deportation be eliminated from this section.

VIII.C.2. Long-Term Permanent Residence as a Bar to Deportation

The Commissioners did not reach a consensus on this issue.

VIII.D. Exclusions

VIII.D.1. Grounds for Exclusion

The Select Commission believes that the present exclusionary grounds should not be retained. The Select Commission recommends that Congress reexamine the grounds for exclusion set forth in the INA.

VIII.D.2. Reentry Doctrine

The Select Commission recommends that the reentry doctrine be modified so that returning lawful permanent resident aliens (those who have departed from the United States for temporary purposes) can reenter the United States without being subject to the exclusion laws, except the following:

- Criminal grounds for exclusion (criminal convictions while abroad);
- Political grounds for exclusion;
- Entry into the United States without inspection; and
- Engaging in persecution.

SECTION IX. LANGUAGE REQUIREMENT FOR NATURALIZATION

The Select Commission recommends that the current English-language requirement for naturalization be retained, but also recommends that the English-language requirement be modified to provide a flexible formula that would permit older persons with many years of permanent residence in the United States to obtain citizenship without reading, writing or speaking English.

SECTION X. TREATMENT OF U.S. TERRITORIES UNDER U.S. IMMIGRATION AND NATIONALITY LAWS

The Select Commission recommends that U.S. law permit, but not require, special treatment of all U.S. territories.

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INTRODUCTION TO THE FINAL REPORT OF
THE SELECT COMMISSION ON IMMIGRATION AND REFUGEE POLICY

> "If I am not for myself, who will be for me? But if I am for myself only, what am I? And if not now, when?"
>
> Hillel
> Sayings of the Fathers 1:14

Our history is largely the story of immigration. Even the Indians were immigrants. The ancestors of all other Americans--when measured in terms of world history--came here only yesterday.

As a refuge and a land of opportunity, the United States remains the world's number one magnet. This fact reaffirms the faith of our founding fathers and the central values we have adopted as a nation--freedom, equality under the law, opportunity and respect for diversity. Throughout our history, our leaders have seen in immigration the articulation of these deeply held and religiously based values. President Ronald W. Reagan, in his speech accepting the Republican nomination for the presidency, reminded us of that fact when he said:

> "I ask you to trust that American spirit which knows no ethnic, religious, social, political, regional or economic boundaries: the spirit that burned with zeal in the hearts of millions of immigrants from every corner of the earth who came here in search of freedom . . ."

Then, examining the events of the recent past, the President asked:

> "Can we doubt that only a divine Providence placed this land--this island of freedom here as a refuge for all those people in the world who yearn to breathe free? Jews and Christians enduring persecution behind the Iron Curtain, the boat people of Southeast Asia, Cuba, and Haiti, the victims of drought and famine in Africa, the freedom fighters in Afghanistan and our own countrymen held in savage captivity."

Letters and oral testimony to the Select Commission affirm the continuing vitality of President Reagan's characterization of the United States as a land of opportunity and as a beacon of liberty for immigrants. We have listened carefully to these moving voices, but we have also been faced with the reality of limitations on immigration. If it is a truism to say that the United States is a nation of immigrants, it is also a truism that it is one no longer, nor can it become a land of unlimited immigration. As important as immigration has been and remains to our country, it is no longer possible to say as George Washington did that we welcome all of the oppressed of the world, or as did the poet, Emma Lazarus, that we should take all of the huddled masses yearning to be free.

The United States of America--no matter how powerful and idealistic--cannot by itself solve the problems of world migration.

This nation must continue to have some limits on immigration. Our policy--while providing opportunity to a portion of the world's population--must be guided by the basic national interests of the people of the United States.

The emphasis in the Commission's recommendations, which are themselves complex, can be summed up quite simply: We recommend closing the back door to undocumented/illegal migration, opening the front door a little more to accommodate legal migration in the interests of this country, defining our immigration goals clearly and providing a structure to implement them effectively, and setting forth procedures which will lead to fair and efficient adjudication and administration of U.S. immigration laws.

The United States and the World

In emphasizing that our recommendations must be consistent with U.S. national interests, we are aware of the fact that we live in a shrinking, interdependent world and that world economic and political forces result in the migration of peoples. We also are aware of how inadequately the world is organized to deal with the dislocations that occur as a result of such migrations. None of the great international issues of our time--arms control, energy, food or migration--can be solved entirely within the framework of a nation-state world. Certainly, there is no unilateral U.S.

solution to any of these problems; we must work with a world organized along nation-state lines and with existing international organizations. As a nation responsible for the destiny of its people and their descendants, we can better deal with these problems by working with other nations to build more effective international mechanisms. That is why we begin our recommendations with a call for a new emphasis on internationalizing world migration issues. Since many, large-scale, international migrations are caused by war, poverty and persecution within sending nations, it is in the national interests of the United States to work with other nations to prevent or ameliorate those conditions.

Immigration and the National Interest

That immigration serves humanitarian ends is unquestionable: most immigrants come to the United States seeking reunion with their families or as refugees. But in examining U.S. immigration policy and developing its recommendations, the Select Commission also asked another question: Is immigration and the acceptance of refugees in the U.S. national interest? That question was asked by many in this country when Fidel Castro pushed his own citizens out of Cuba knowing that their main destination would be the United States. Nothing about immigration--even widespread visa abuse and illegal border crossings--seems to have upset the American people more than the Cuban push-out of 1980. But these new entrants were neither immigrants nor refugees, having entered the United States without qualifying as either. Their presence brought home to most Americans the fact that U.S. immigration policy was out of control. It also brought many letters to the Select Commission calling for restrictions on U.S. immigration.

It is easy to understand the feelings which motivated these opinions, but in the light of hard-headed U.S. interests it would be a mistake to let the emotion generated by an unusual, almost bizarre episode guide national policy. While the Cuban push-out should not be permitted to happen again, the fact that it happened once should not blind us to the advantages of legally accepting a reasonable number of immigrants and refugees.

To the question: Is immigration in the U.S. national interest?, the Select Commission gives a strong but qualified yes. A strong yes because we believe there are many benefits which immigrants bring to U.S. society; a qualified yes because we believe there are limits on the ability of this country to absorb large numbers of immigrants effectively. Our work during the past 19 months has confirmed the continuing value of accepting immigrants and refugees to the United States, in addition to the humanitarian purpose served. The research findings are clear: Immigrants, refugees and their children work hard and contribute to the economic well-being of our society; strengthen our social security system and manpower capability; strengthen our ties with other nations; increase our language and cultural resources and powerfully demonstrate to the world that the United States is an open and free society.

New immigrants benefit the United States and reaffirm its deepest values. One can see them in New Orleans, where Indochinese refugees, hard at work during the day, crowd classrooms at night to learn English; in Fall River, Massachusetts, a city with more than 20 identifiable ethnic groups whose ancestral flags fly in front of City Hall and which has been restored to economic health by recent Portuguese immigrants; in Koreatown in Los Angeles, where Korean Americans have taken an inner-city slum and transformed it into a vital community; in Florida, where Cuban Americans have renewed the City of Miami, through economic ties to Latin America; in Chicago, where young Jewish immigrants from the Soviet Union work two jobs in addition to attending high school; in San Antonio, where new Mexican immigrants are taking advantage of English-literacy classes and have joined Mexican Americans with many generations of U.S. residence to create a healthy economy and to strengthen trade and cultural ties with our border neighbor; and in Denver, where, in a third grade class, students from five countries are learning the history of the United States and are learning to count in two foreign languages in addition to English, and where, in February 1980, a Vietnamese American third grader who had been in this country for only six months, identified George Washington as "the father of our country."

But even though immigration is good for this country, the Commission has rejected the arguments of many economists, ethnic groups and religious leaders for a great expansion in the number of immigrants and refugees to be accepted by the United States. Many of those in favor of expanded immigration have argued that the United States is capable of absorbing far greater numbers of immigrants than are now admitted. They contend that:

- The United States has the lowest population density of any wealthy, industrial nation in the world, with the exceptions of Canada and Australia; and
- The United States, with only six percent of the world's population, still accounts for 25 percent of the world's gross national product.

They further point out that the United States faces serious labor shortages in the decade to come, particularly of young and middle-aged workers. Greatly expanded immigration, they believe, will go a long way towards providing needed workers.

Religious leaders have presented some of these same arguments from a different perspective. They, too, note the vast resources and relatively low population density of the United States, but argue that this nation has a humanitarian responsibility to provide immigration opportunities to those seeking entry on the basis of family reunification or as refugees. They wish the United States to preserve its role as a country of large-scale immigration, despite fears about the entry of the foreign-born.

Historians, in their support of increased immigration, have cautioned against overly restrictionist tendencies. They point out that U.S. citizens have always been concerned about the arrival of immigrants, but note that immigrants have always made contributions to U.S. society. These scholars also state that the proportion of foreign-born citizens in the United States is now at an all-time low since 1850, when the government began to keep such statistics. If immigration did no harm to U.S. society when foreign-born citizens accounted for 14 to 15 percent of the population, they argue it should certainly cause no internal problems now.

The Select Commission is, however, recommending a more cautious approach. This is not the time for a large-scale expansion in legal immigration--for resident aliens or temporary workers--because the first order of priority is bringing undocumented/ illegal immigration under control, while setting up a rational system for legal immigration.

The Commission is, therefore, recommending a modest increase in legal immigration sufficient to expedite the clearance of backlogs--mainly to reunify families--which have developed under the current immigration system and to introduce a new system, which we believe will be more equitable and more clearly reflect our interests as a nation.

Such a modest increase will continue to bring the benefits of immigration to the United States without exacerbating fears--not always rational--of competition with immigrants. Such an increase recognizes that immigrants create as well as take jobs and readily pay more into the public coffers than they take out, as research completed for the Select Commission shows. It also recognizes that immigrants in some locales do compete for jobs, housing and space in schools with citizens and previously entered resident aliens. In the case of refugees, there is an immediate competition with needy U.S. citizens for a variety of services which must be paid for by U.S. taxpayers. In many communities, local officials have complained about the strains which a sudden influx of refugees has placed on their capabilities to provide health services, schooling and housing.

The American people have demonstrated that they are willing to do what must be done to save a portion of the world's refugees from persecution and sometimes even from death. That is why the

Select Commission has endorsed the Refugee Act of 1980, even while questioning aspects of its administration. But it is impossible for the United States to absorb even a large proportion of the 16 million refugees in this world and still give high priority to meeting the needs of its own poor, especially those in its racial and ethnic minorities. Our present refugee policy may seem unduly harsh and narrow to many, particularly when a terribly poor country such as Somalia has more than one million refugees in its care. But we must be realistic about our obligations as a society to persons in need who already live in this country.

Undocumented/Illegal Migration

Illegal migrations of persons in search of work occur extensively throughout Europe, Latin America, as well as in Canada and the United States. Such migration to the United States is so extensive that hundreds of thousands of persons annually enter this country outside of the law. Although these migrants usually do not stay, each year tens of thousands of other aliens remain in the United States illegally after coming here originally as students or other nonimmigrant aliens. The Select Commission is well aware of the widespread dissatisfaction among U.S. citizens with an immigration policy that seems to be out of control.

Some have argued before the Select Commission that there is virtually nothing that can be done about the tidal movements of people that are propelled by economic forces. They believe this is particularly true in a country such as ours, with land and coastal borders which are easy to cross and where millions of tourists and students, having entered, find it easy to stay. Some have further testified that the United States has nothing to fear from illegal migration since immigrants who come or remain outside of the law are self-selected, hard working, highly creative persons who, even if they remain in this country, aid rather than harm U.S. society. This is a view that the Commission believes does not sufficiently consider the serious problems created by illegal migration.

One does not have to be able to quantify in detail all of the impacts of undocumented/illegal aliens in the United States to know that there are some serious adverse effects. Some U.S. citizens and resident aliens who can least afford it are hurt by competition for jobs and housing and a reduction of wages and standards at the workplace. The existence of a fugitive underground class is unhealthy for society as a whole and may contribute to ethnic tensions. In addition, widespread illegality erodes confidence in the law generally, and immigration law specifically, while being unfair to those who seek to immigrate legally.

The Select Commission's determination to enforce the law is no reflection on the character or the ability of those who desperately seek to work and provide for their families. Coming from all over the world, they represent, as immigrants invariably do, a portion of the world's most ambitious and creative men and women. But if U.S. immigration policy is to serve this nation's interests, it must be enforced effectively. This nation has a responsibility to its people--citizens and resident aliens--and failure to enforce immigration law means not living up to that responsibility.

The strong desire to regain control over U.S. immigration policy is one of several reasons for the Commission's unanimous vote to legalize a substantial portion of the undocumented/illegal aliens now in our country. Another is its acknowledgment that, in a sense, our society has participated in the creation of the problem. Many undocumented/illegal migrants were induced to come to the United States by offers of work from U.S. employers who recruited and hired them under protection of present U.S. law. A significant minority of undocumented/illegal aliens have been part of a chain of family migrants to the United States for at least two generations. Often entering for temporary work, these migrants began coming to the United States before this nation imposed a ceiling on legal immigration from the Western Hemisphere in 1968 and a 20,000 per-country visa ceiling on legal immigration for each Western Hemisphere country in 1976.

But that is not the main reason for legalizing a substantial portion of those who are here. Legalizing those who have settled in this country and who are otherwise qualified will have many positive benefits for the United States as a whole:

- Hard-working, law-abiding persons with a stake in U.S. society will come out into the open and contribute much more to it;
- No longer exploitable at the workplace, they no longer will contribute to depressing U.S. labor standards and wages;
- New and accurate information about migration routes and the smuggling of people into the United States will contribute to the targeting of enforcement resources to stop illegal migrations in the future;
- New and accurate information about the origins of migration will enable the United States to work with large sending countries in targeting aid and investment programs to deal with migration pressures at the source, in the villages and provinces of those countries;
- New and accurate information about patterns of visa abuse by those who entered as nonimmigrant aliens will help to make our visa issuance process and control at ports of entry more effective;

The recommended legalization program will help to enforce the law, however, only if other enforcement measures designed to curtail future illegal migration to the United States are instituted. That is why the Commission has linked the legalization program to the introduction of such measures. Recognizing that future migration pressures could lead to even higher levels of illegal migration to the United States, the Commission has emphasized the development of effective enforcement strategies, including a new law to penalize employers who hire undocumented/illegal aliens and new measures to control the abuse of nonimmigrant status.

No one on this Commission expects to stop illegal migration totally or believes that new enforcement measures can be instituted without cost. But we do believe that we can reduce illegal entries sharply, and that the social costs of not doing so may be grave. What is a serious problem today, could become a monumental crisis as migration pressures increase.

The Reunification of Families

A better immigration system may help to reduce the pressures for illegal migration to some extent. A look at present U.S. immigration statistics reveals one relatively small but important source of illegal migration. Of the more than one million persons now registered at consular offices waiting for visas, more than 700,000 are relatives of U.S. citizens or resident aliens, including spouses and minor children of resident aliens. There is something wrong with a law that keeps out--for as long as eight years--the small child of a mother or father who has settled in the United States while a nonrelative or less close relative from another country can come in immediately. Certainly a strong incentive to enter illegally exists for persons who are separated from close family members for a long period of time.

What is basically wrong is that we have not made clear our priority to reunify the immediate relatives of U.S. residents regardless of their nationality. Among our recommendations are two which would help to do just that. The first puts immigrants whose entry into the United States would reunify families on a separate track from other immigrants. The second puts spouses and minor children of lawful permanent resident aliens under a separate, numerically limited category without country ceilings. Eliminating country ceilings in this category, should help assure the reunification of the families of permanent resident aliens on a first-come, first-served basis within a fixed world ceiling.

Independent Immigrants

The creation of a separate category for nonfamily immigrants--the independent category--may also somewhat reduce illegal immigration by broadening immigration opportunities. It reaffirms the importance to the United States of traditional "new seed" immigrants who come to work, save, invest and plan for their children and grandchildren, and creates an immigration channel for persons who cannot enter the United States on the basis of family reunification. It is the Commission's hope that this category will provide immigration opportunities for those persons who come from countries where immigration to the United States has not been recent or from countries that have no immigration base here.

Many other important issues have also been addressed by the Select Commission, including an upgrading of our system for administering U.S. immigration laws, the need to streamline deportation proceedings, and the importance of English-language acquisition. We have tried to address these and other issues with open minds, recognizing that few of them can be resolved easily.

That there is disagreement on some issues among Commissioners is not surprising since we represent a great variety of perspectives and since the complex issues of immigration are charged with emotion and special interest. Even though we have disagreed among ourselves in formulating some answers, we have reached consensus on a great many of the questions which faced us. Our basic concern has been the common good which must characterize good U.S. law, and we have tried to recommend policies that would be responsible, equitable, efficient and enforceable.

We have not, of course, answered every question and our answers are far from perfect, but we believe we asked the right questions and that the answers are free from the cant, hypocrisy and racism which have sometimes characterized U.S. immigration policy in years gone by. With that in mind, we hope that our recommendations, in the words of George Washington, "set a standard to which the wise and honest can repair."

The Reverend Theodore M. Hesburgh

SECTION I. INTERNATIONAL ISSUES*

Introduction

Migration has always been a part of human existence, but never more than in the twentieth century. Since 1900, more than 100 million persons have left their homelands as refugees or displaced persons. Millions more have chosen to seek political and religious freedom, adventure and employment opportunities far from where they were born.

One of the greatest pressures for international migration is and will be world population growth. Projections of this growth show more than a 50 percent increase from 1975 to the year 2000, from 4 billion to 6.35 billion. It has been estimated that 92 percent of this growth will take place in countries whose resources are least able to accommodate the needs of new population.

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*Commission vote

Should the Select Commission recommend U.S. participation in efforts to increase international cooperation on world migration and refugee problems?

The Select Commission voted on a package of proposals which form Recommendations I.A. to I.D. Yes-16.

See Appendix B for Supplemental Statements of Commissioners Kennedy, Ochi, Reynoso and Simpson.

The United States cannot, by itself, moderate migration pressures. It will require a sustained, long-term cooperative effort by all nations to reduce both global and national inequities and the potential conflicts which produce migrants. This will involve actions beyond the narrow sphere of migration policies--actions in such areas as trade, investment, monetary and energy policies, development finance, human rights, education, agriculture and land reform--which are necessary to increase the productivity of poorer countries, to give them some hope for the future and to provide them with a sound economic base. The costs of ignoring the needs of the developing world are serious. World economic and political stability would be threatened by the sudden, large-scale population moves which could result from widespread political or economic chaos in developing nations.

The widespread magnitude of actual migration and the fear of other potential large-scale movements between countries has led many governments to adopt ever more restrictive immigration policies in an effort to maintain national control over borders and shores. The world situation today, however, throws into serious question the assumption that international migration can be controlled by domestic policy. Instead, migration--along with arms, energy, food and trade--has become a major, rapidly growing world problem which requires a multinational solution.

I.A. BETTER UNDERSTANDING OF INTERNATIONAL MIGRATION*

THE SELECT COMMISSION RECOMMENDS THAT THE UNITED STATES CONTINUE TO WORK WITH OTHER NATIONS AND PRINCIPAL INTERNATIONAL ORGANIZATIONS THAT COLLECT INFORMATION, CONDUCT RESEARCH AND COORDINATE CONSULTATIONS ON MIGRATORY FLOWS AND THE TREATMENT OF INTERNATIONAL MIGRANTS, TO DEVELOP A BETTER UNDERSTANDING OF MIGRATION ISSUES.

The United States would benefit from a more comprehensive understanding of exactly who gains and who loses from international migration. For both receiving and sending countries, there are costs as well as benefits, but effects are hard to measure and are often the result of a chain reaction whose stages are difficult to trace. For example, in the United States foreign workers may displace some native workers, but may also--by taking undesirable jobs in industries that might otherwise relocate outside the country and by developing new businesses at home--actually create new jobs. In addition, while some migrants send financial support to their families who live outside the employing country, these remittances may return, in part, to that country in the form of new export sales. It is extremely difficult to measure these costs and benefits, and even more difficult to weigh them in the balance. Domestically, some groups gain while others suffer.

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*Commission vote

The Select Commission voted on a package of proposals which form Recommendations I.A. to I.D. Yes-16.

A number of international organizations are studying the problem of international migration. The U.N. High Commissioner for Refugees (UNHCR) and the Intergovernmental Committee on Migration (ICM) provide information on refugee issues. The International Labor Organization and the Organization for Economic Cooperation and Development collect statistical data and conduct research on issues relating to labor migration. The Select Commission recommends that the United States continue to work with such international organizations.

With this recommendation, the Select Commission seeks to augment not only this nation's knowledge with regard to migration matters but to provide new information to the international community as a whole. Such information will allow informed policy decisions in dealing with international migration issues.

I.B. REVITALIZATION OF EXISTING INTERNATIONAL ORGANIZATIONS*

THE SELECT COMMISSION RECOMMENDS THAT THE UNITED STATES INITIATE DISCUSSION THROUGH AN INTERNATIONAL CONFERENCE ON WAYS TO REVITALIZE EXISTING INSTITUTIONAL ARRANGEMENTS FOR INTERNATIONAL COOPERATION IN THE HANDLING OF MIGRATION AND REFUGEE PROBLEMS.

Recent increases in the worldwide refugee population, as a result of the wars in Ethiopia and Afghanistan, have once again focused attention on the need for an international response to the never-ending flow of displaced persons from political and economic upheavals (see Tables 1 and 2 for Resettlement Totals of Receiving Countries and Contributions to International Refugee Agencies). Moreover, each year millions of workers seeking economic opportunity join the migratory flow. Commission research indicates that this flow of refugees and economic migrants has reached a level which is beginning to strain the resources and/or the good will of the relatively few countries

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*Commission vote

The Select Commission voted on a package of proposals which form Recommendations I.A. to I.D. Yes-16.

See Appendix B for Supplemental Statements of Commissioner Kennedy on this issue.

TABLE 1

RESETTLEMENT TOTALS OF RECEIVING COUNTRIES FROM SPRING 1975 TO MAY 31, 1980

(Top ten countries, ranked by ratio of refugees to population)

	FIVE-YEAR RESETTLEMENT TOTAL*	POPULATION (In millions)	RATIO OF REFUGEES TO POPULATION
Canada	74,000	24.0	1: 324
Australia	44,000	14.6	1: 332
United States	595,000	222.5	1: 374
France	68,700	53.6	1: 780
Switzerland	5,300	6.3	1: 1,189
Sweden	6,100	8.3	1: 1,361
Norway	2,300	4.1	1: 1,783
Austria	3,700	7.5	1: 2,027
Federal Republic of Germany	28,300	61.1	1: 2,159
United Kingdom	23,800	55.8	1: 2,345

NOTE: Adapted from U.S. Committee for Refugees, "Who Helps the World's Refugees?" October 10, 1980.

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* Totals taken from reports by the United Nations High Commissioner for Refugees and the U.S. Coordinator for Refugee Affairs.

TABLE 2

CONTRIBUTIONS TO INTERNATIONAL REFUGEE AGENCIES, 1979

(Top ten countries, ranked by contribution per capita)

	CONTRIBUTION* (In millions of dollars)	POPULATION† (In Millions)	CONTRIBUTION PER CAPITA
Sweden	$ 28.6	8.3	$3.44
Norway	11.2	4.1	2.73
Denmark	13.3	5.1	2.61
Switzerland	10.5	6.3	1.66
The Netherlands	22.7	14.1	1.60
Federal Republic of Germany	62.8	61.1	1.02
United States	165.8	222.5	.74
United Kingdom	38.8	55.8	.69
Saudia Arabia	5.6	8.2	.68
Japan	75.9	116.8	.64

NOTE: Adapted from U.S. Committee for Refugees, "Who Helps the World's Refugees?" October 10, 1980.

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* Amounts reported by United Nations High Commissioners for Refugees (UNHCR), United Nations Relief and Works Agency (UNRWA) (for Palestinian refugees), U.N. Food Program (for refugees), UNICEF (for refugees) and Intergovernmental Committee for European Migration (ICEM). Contributions by the European Economic Community, totaling $66 million, have been assigned to countries in proportion to members' budget support. The top 10 countries contributed 83% of the total of $522 million received.

† Population and gross national product figures from Population Reference Bureau, Washington, D.C.

where they seek admittance. Some receiving nations such as Somalia are terribly poor. Among the wealthier nations, the United States shoulders a disproportionate burden for resettlement of refugees and should not be expected to continue to meet what is the responsibility of all economically advanced societies. If, as projected, the magnitude of refugee and economic migrations continues to increase, such flows will escape the boundaries of any conceivable national policy for receiving new population or for unilaterally instituting programs that will have any measurable impact on these issues.

A problem of this magnitude, affecting international security and the economic well-being of many nations clearly requires international measures of cooperation. Further, it must be dealt with through legal and diplomatic channels, material assistance designed to relieve pressures in receiving countries, and the more equitable sharing of resettlement responsibilities. Commission research has shown that the existing international organizations, including such institutions as the U.N. High Commissioner for Refugees and the Intergovernmental Committee on Migration, could provide an effective international response even though they are in need of revitalization.

Consultants to the Select Commission have been critical of the ability of international institutions to deal adequately with the problems of world migration. To date, their efforts have been sporadic and limited by funding and jurisdictional restraints. The Commission nevertheless supports the involvement of existing international institutions in the handling of migration and refugee problems. It believes that present international organizations must be revitalized to deal effectively with the problems of international migration and recommends that the means for such revitalization be the subject of an international conference.

An international conference, held in Geneva in 1979 to discuss Indochinese refugees, has already been successful in discussing both short- and long-term approaches to refugee problems, and in mobilizing government action in raising funds and obtaining resettlement commitments from participating nations. The conference also initiated discussions on how the burden of refugee resettlement can be shared more equitably. Similar discussions can be held regarding other types of migration problems, including the development of initiatives for strengthening existing international organizations and making them more responsive and effective in dealing with migration issues.

I.C. EXPANSION OF BILATERAL CONSULTATIONS*

THE SELECT COMMISSION RECOMMENDS THAT THE UNITED STATES EXPAND BILATERAL CONSULTATIONS WITH OTHER GOVERNMENTS, ESPECIALLY MEXICO AND OTHER REGIONAL NEIGHBORS REGARDING MIGRATION.

In recognition of the high degree of interdependence in the global economy, the Select Commission urges the expansion of bilateral consultations with other nations, especially with Mexico and other regional neighbors, to determine how migration pressures might be moderated to the mutual benefit of the United States and other members in the international community. The areas of mutual or common interest among nations concerning immigration questions may be wider than they have seemed to date. These areas need to be identified and addressed. Where nations share interests they can cooperate to enhance the benefits and minimize the problems both experience in managing migration flows.

The Select Commission believes that the United States should expand bilateral consultations with other governments. These consultations should include discussions on mutual cooperation for:

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*Commission vote

The Select Commission voted on a package of proposals which form Recommendations I.A. to I.D. Yes-16.

- the effective enforcement of immigration laws;
- the protection of nationals residing in each other's countries;
- the resettlement of refugees;
- the reduction of migration pressures;
- the coordination and dissemination of migration research; and
- the development of regional mechanisms to address immigration issues of regional concern on all of the above and repatriation.

The Commission is of the opinion that such bilateral consultations are necessary if countries are to find long-term solutions to migration problems.

I.D. THE CREATION OF REGIONAL MECHANISMS*

THE UNITED STATED SHOULD INITIATE DISCUSSIONS WITH REGIONAL NEIGHBORS ON THE CREATION OF MECHANISMS TO:

- DISCUSS AND MAKE RECOMMENDATIONS ON WAYS TO PROMOTE REGIONAL COOPERATION ON THE RELATED MATTERS OF TRADE, AID, INVESTMENT, DEVELOPMENT AND MIGRATION;
- EXPLORE ADDITIONAL MEANS OF COOPERATION FOR EFFECTIVE ENFORCEMENT OF IMMIGRATION LAWS;
- ESTABLISH MEANS FOR MUTUAL COOPERATION FOR THE PROTECTION OF THE HUMAN AND LABOR RIGHTS OF NATIONALS RESIDING IN EACH OTHER'S COUNTRIES;
- EXPLORE THE POSSIBILITY OF NEGOTIATING A REGIONAL CONVENTION ON FORCED MIGRATION OR EXPULSION OF CITIZENS; AND
- CONSIDER ESTABLISHMENT OF A REGIONAL AUTHORITY TO WORK WITH THE U.N. HIGH COMMISSIONER FOR REFUGEES AND THE INTERGOVERNMENTAL COMMITTEE ON MIGRATION IN ARRANGING FOR THE PERMANENT AND PRODUCTIVE RESETTLEMENT OF ASYLEES WHO CANNOT BE REPATRIATED TO THEIR COUNTRIES OF ORIGIN.

Many immigration problems facing the United States are regional in nature. Among the most pressing are the undocumented entry of aliens seeking employment opportunities and the mass arrivals of those seeking first asylum. In recognition of these immediate hemispheric problems and the fact that regions have economic, political and other ties which make them possible units of cooperation, the Select Commission strongly supports the efforts listed above.

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*Commission vote

The Select Commission voted on a package of proposals which form Recommendations I.A. to I.D. Yes-16.

Regional Cooperation on Development Needs

Relative poverty affects a large number of this hemisphere's nations. Lacking opportunity, some migrants, notably those from the Caribbean Basin, have been willing to risk their lives in small, leaky boats rather than face economic deprivations at home. Without a change in policy (see Section II), the United States can expect the arrival of many people so desperate for better opportunities that they will use any means, legal or illegal, to improve their lot. Prosperity, or at least hope, for these nations will depend on serious, sustained attention to development. The Select Commission believes that discussions should be held to consider the means of promoting cooperation on the related matters of trade, aid, investment, development and the reduction of migration pressures. The Commission is of the opinion that mutual cooperation on these matters holds some promise in reaching solutions to migration problems if targeted to specific areas which are continuing sources of labor migration.

Regional Cooperation on Enforcement

While the great disparity between economic opportunities in the United States and many of its regional neighbors continues to exist, regional cooperation must also focus on programs for reducing the violation of U.S. immigration laws, including that of illegal entry. The Commission acknowledges that major, unilateral reforms are needed in U.S. immigration law and that the United States must institute its own improvements in domestic enforcement (See Recommendations II.A.1 to II.A.8). Nevertheless, cooperation with other nations, especially in curbing the smuggling of aliens, can make these enforcement efforts more effective.

Regional Cooperation on the Protection of Aliens

Several international organizations are concerned with the rights of international migrants. For example, the International Labor Organization has developed several recommendations and conventions dealing with protection of the rights of migrant workers.* The Select Commission supports these efforts on a regional level to develop mechanisms to promote mutual cooperation for the protection of nationals residing in countries not their own.

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*As yet, very few countries have ratified these conventions.

Regional Cooperation on Mass Asylum

The problem of mass asylum must be addressed from two perspectives:

- The need for standards to assure that persons genuinely qualifying as asylees will be refused neither temporary asylum nor expelled to nations where they may be endangered because of race, religion, nationality, political opinion or social group; and
- The need for measures to prevent or control forced migrations, to ensure widespread cooperation for immediate assistance to territories of first asylum, including material aid, and to ensure that asylees will be resettled in third countries.

It is the Select Commission's belief that to be effective these measures should be undertaken on both regional and international levels. It, therefore, recommends a formal regional response to real and potential forced migrations, possibly to include a convention which could consider both legal measures and provisions for material assistance. The main thrust of regional initiatives must be to demonstrate to each nation concerned the threat to regional stability constituted by forced migration, and the fact that it is in the national interest of each nation to cooperate in the avoidance of chaotic, potentially explosive situations.

Regional Cooperation on Resettlement

The Select Commission also urges that consideration be given to the establishment of a regional authority to work with the U.N. High Commissioner for Refugees and the Intergovernmental Committee for Migration in resettling asylees who cannot be repatriated. This authority would ensure that the burden of resettling expellees who cannot be returned to their home countries is equitably distributed throughout the region and does not fall only upon those nations whose borders or shores are easiest to reach.

SECTION II. UNDOCUMENTED/ILLEGAL ALIENS

Introduction

In the hearings the Select Commission has held and in the letters it has received, one issue has emerged as most pressing--the problem of undocumented/illegal migration. Current policy and law enforcement efforts have been criticized from all sides. Some have said that the law is not being enforced, that current programs are ineffective and erratic. Others have criticized national policies as being unclear and suggested that the very ambiguity of these policies and U.S. attitudes is encouraging undocumented/illegal immigration. Terms such as "uncontrolled hemorrhage of people," "flouting of the law," and "exploitation of illegal aliens" were heard in Commission testimony. The message is clear--most U.S. citizens believe that the half-open door of undocumented/illegal migration should be closed.

In addition to seeking public representations on this issue, the Select Commission has also examined existing research on undocumented/illegal aliens, commissioned new studies on the subject and held consultations in which experts have testified as to their findings regarding undocumented/illegal immigration.

Although the literature on this subject is inclusive, the studies, as a whole, do point to some common findings about the characteristics of undocumented aliens.*

Characteristics

- The number of undocumented/illegal residents in the United States remains uncertain. Census Bureau researchers, in a report for the Select Commission that was based on a review of existing studies, offered the following cautious speculation:

  > The total number of illegal residents in the United States for some recent year, such as 1978, is almost certainly below 6 million, and may be substantially less, possibly only 3.5 to 5.0 million.

  According to this report, Mexican nationals probably account for less than half of the undocumented/illegal population. Other large numbers come from Jamaica, the Dominican Republic, El Salvador, Haiti, South America and various Asian countries.

- The majority of undocumented/illegal aliens who enter without inspection are believed to be relatively young, single males. Those who enter with forged or valid documents are more likely to reflect a greater cross-section in terms of sex, age and marital status.

- All studies indicate that undocumented/illegal aliens are attracted to this country by U.S. employment opportunities. Most come from countries that have high rates of under- and unemployment.

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*Most of the information about the undocumented/illegal aliens is derived from a series of studies using nonrandom, small samples of undocumented persons. Because we do not know the overall numbers or characteristics of the population from which these samples were taken, however, it is impossible to generalize from these reports. Moreover, most of the studies concentrate on Mexican undocumented/illegal aliens who have crossed the southern border without inspection. Only a few studies have examined the experiences of other undocumented migrants or of visa abusers. Detailed reports on this research fully referenced, will be delivered to the President and the Congress before May 1, 1981.

- A majority of studies indicate that undocumented/illegal aliens generally earn at or above the minimum wage. Agricultural and domestic workers and those working in border areas tend to earn lower wages than industrial workers in the interior. Those who initially enter with valid documents appear to earn more than do those who enter without inspection. Similarly, union members are paid substantially more than nonunion migrants.

- However low the salaries of undocumented/illegal aliens in the United States, the studies indicate that their U.S. wages are many times that of previous wages in the home country. In one sample, agricultural day laborers were paid an average of $120 per week in the United States and $9.20 per week in Mexico. Other studies indicate that some undocumented/illegal aliens had been employed in high status but low paying occupations in their home countries. The attraction of what are usually lower status but higher paying jobs in the United States is powerful.

- Research studies reveal a wide range in the duration of stay of illegal aliens--from several months to many years--depending on location of the study and characteristics of the sample. Studies of apprehended aliens in border areas show far shorter lengths of stay than do studies of resident undocumented/illegal aliens in interior studies. Those who enter with documents tend to stay longer than those who enter without inspection.

Although there tends to be some consensus among researchers on some general characteristics of undocumented/illegal aliens, there is almost no consensus regarding the impact of illegal immigration on U.S. society. Four issues are of primary concern to researchers and the public: impact on social services, job displacement, depression of wages and the overall effect on U.S. society.

Impact on Social Services

Interpretations of the effect of undocumented/illegal aliens on social services vary, although most studies indicate that undocumented/illegal aliens do not place a substantial burden on social services. Many studies attempt to measure their impact on services by comparing the tax payments of undocumented/illegal aliens with their pattern of use of services. This research has found a wide range in the proportion of illegal aliens who have social security, and federal and state income taxes withheld. Studies of those in interior areas reveal high rates (70 percent or more) of tax payment. Those in border areas who are working in temporary agricultural jobs are less likely to have their taxes withheld.

As far as utilization of services is concerned, the studies find a very low use of all cash-assistance programs. Use of school services is higher, but it appears to be dependent on length of stay. Migrants who remain in the United States for extended periods are more likely to bring their families with them than are temporary workers. Many of these long-term residents are believed to contribute to their school systems through various forms of local taxation.

The greatest controversy regarding impact of undocumented/illegal aliens on social services surrounds the use of health services. A number of county and municipal hospitals contend that undocumented aliens make substantial use of their emergency room and outpatient services. Some financially distressed hospitals claim that their financial troubles stem from the uncompensated services they provide to undocumented/illegal aliens. Research studies that focus on undocumented/illegal aliens, however, show that less than 10 percent of the samples studied used public hospital services and that patterns of payment are comparable to those of U.S. citizens. In these studies, a high proportion of undocumented/illegal aliens pay for hospital services through health insurance or by direct payment.

Job Displacement

The opinion of economists rang along a continuum as to findings on the job-displacing effects of undocumented/illegal immigration. On one end are those who believe that undocumented/illegal workers take jobs that would otherwise go to U.S. workers. Some argue that competition from cheap labor tends to depress sectors of the economy and make some otherwise desirable jobs undesirable. It is also suggested that undocumented aliens, especially in border areas, compete for jobs with economically disadvantaged minorities. On the other end of the continuum are those who believe that undocumented/illegal workers take jobs that U.S. workers do not want and will not take. Some also suggest that undocumented aliens, by taking undesirable jobs, maintain industries that would otherwise move outside of this country for labor. In such cases, they believe that undocumented/illegal aliens actually maintain jobs in those industries for U.S. workers. Some economists argue that undocumented/illegal aliens usually represent an additional, not substitute, supply of labor.

Wage Depression

Interpretations of the relationship between wage depression and undocumented/illegal migration are also subject to differences in theoretical perspective. According to some experts, the differential in wages between the home countries of most undocumented/illegal aliens and the United States make these aliens less concerned than citizens about the actual level of their U.S. wages. The potential threat of apprehension and deportation, they argue, may also make undocumented/illegal workers more willing to work for lower wages. Other analysts question this theory. They argue that there is little evidence to indicate that undocumented/illegal aliens have any overall effect on U.S. wages and salaries. Some economists even argue that the wages of skilled U.S. workers will rise as a consequence of an increase in the relative number of unskilled, undocumented/illegal aliens who are working in this country.

Most economists acknowledge, though, that the extent of competition between native workers and migrants depends on the degree to which they have similar job skills. Since most undocumented/illegal migrants tend to be young and unskilled, it is likely that young, less-skilled natives will be the most adversely affected by their presence. Thus, although the effect of undocumented/illegal immigration on the U.S. labor force is not quantifiable, it is apparent that the continuing flow of undocumented workers across U.S. borders has certainly contributed to the displacement of some U.S. workers and the depression of some U.S. wages.

Effects on U.S. Law and Society

Although the research findings and theoretical arguments with regard to the impact of undocumented/illegal immigration upon the U.S. economy and social services are inconclusive, there is evidence that shows that the toleration of large-scale undocumented/illegal immigration can have pernicious effects on U.S. society. This illegal flow, encouraged by employers who provide jobs, has created an underclass of workers who fear apprehension and deportation. Undocumented/illegal migrants, at the mercy of unscrupulous employers and coyotes who smuggle them across the border, cannot or will not avail themselves of the protection of U.S. laws. Not only do they suffer, but so too does U.S. society. Most serious is the fact that illegality breeds illegality. The presence of a substantial number of undocumented/illegal aliens in the United States has resulted not only in a disregard for immigration law but in the breaking of minimum wage and occupational safety laws, and statutes against smuggling as well. As long as undocumented migration flouts U.S. immigration law, its most devastating impact may be the disregard it breeds for other U.S. laws.

The Select Commission favors immediate action to reduce the flow of undocumented/illegal migration. To take no action will result in a worsening of the problem. Migrants will continue to enter the United States illegally, U.S. workers will continue to face competition from this source of inexpensive labor and the disregard for U.S. law will continue to strain the fabric of society.

The Commission has heard testimony in favor of and opposed to the introduction of a new temporary worker program as a solution to undocumented/illegal migration. Some persons have argued that an expanded temporary worker program would help ensure the success of the proposed legalization and enforcement programs and even that a large-scale temporary worker program could substitute for them. They have reasoned that a large-scale program would give employers access to a supply of low-skilled, seasonal workers, and would cushion the impact of enforcement on major sending countries whose nationals would no longer have access to the U.S. labor market through illegal channels.

Others who testified before the Commission have maintained, however, that a large-scale temporary worker program would still fail to satisfy the pressures for migration in these countries. Some experts have pointed to the failures of the bracero program, the United States previous experience with a large-scale temporary worker program. This program employed between four and five million Mexican agricultural workers over a 22 year period. Although the program was instituted with strict provisions guaranteeing worker rights and privileges, these provisions frequently were violated. In addition, the existence of a large-scale temporary worker program did not stop employers from hiring undocumented workers. The flow of these migrants continued until a massive repatriation program--Operation Wetback--was begun and the bracero program was greatly expanded.

Experts have further testified that temporary workers in European countries--so-called guestworkers--who were brought in during times of economic growth often became permanent additions to the host societies, even when their labor was no longer needed. They argue that temporary worker programs have often precipitated additional illegal movement when families tried to reunite in the host country and that these programs have also created internal political and social problems. In general, these opponents find any large-scale temporary worker program, especially when entry is limited by marital status, geography and the nature of the proposed employment, an ineffective means of reducing undocumented/ illegal migration.

The Commission has also heard arguments that the economic and social effects of temporary worker programs must be weighed apart from their effects on illegal migration. Supporters of such programs have testified that U.S. workers are not readily available for many jobs and that the employment of foreign workers is the only alternative to labor shortages. In response, their opponents have argued that U.S. sources of labor do exist, but employers prefer foreign workers because they are more docile and will accept lower wages and/or inferior working conditions. Large-scale temporary worker programs have also been critized by those who believe that such programs tend to identify some kinds of work, generally perceived to be undesirable, with certain foreign nationals or particular ethnic groups.

The Commission has carefully weighed these arguments. Most Commissioners have concluded that the Commission should not recommend the introduction of a large-scale temporary worker program.* Some oppose the concept of such a program under any circumstances. Others believe that until the precise effects of the proposed recommendations to deal with undocumented/illegal immigration are known, the institution of a new temporary worker program would be inadvisable.

The Select Commission has heard testimony regarding a range of other programs to deal with undocumented/illegal migrants. The Commission proposes a three-part program to address this problem:

- Better border and interior controls;
- Economic deterrents in the workplace; and
- Once new enforcement measures have been instituted, legalization of certain undocumented/illegal aliens who are already in this country.

The Select Commission holds the view that implementation of this set of recommendations can bring illegal migration under control.

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*See Recommendation VI.E. for Commission proposals regarding changes in the current H-2 program.

See Appendix B for Supplemental Statements of Commissioners Marshall, Ochi, Otero and Reynoso.

II.A. BORDER AND INTERIOR ENFORCEMENT*

Introduction

The Select Commission has been convinced by arguments in favor of strengthening the enforcement capabilities of the Immigration and Naturalization Service (INS). In recent years, the Service's budget for enforcement has not kept pace with its increasing workload. Instead, INS resource and personnel levels have grown only marginally though data would indicate that the number of persons seeking illegal entry to the United States has substantially increased. While increases in resources and personnel will not in themselves be wholly effective without the important internal reforms recommended elsewhere (see Section VII), the increased enforcement capability they can provide should be an integral part of the package of recommendations to curb the flow of illegal immigration.

In its current application, enforcement against illegal immigration is necessarily selective. The borders receive the most attention, with limited interior enforcement efforts focused on places of employment. This emphasis on border enforcement will continue to be necessary for some time, as it will take a number of years before a fully effective employee eligibility/employer responsibility system is in place (see Recommendation II.B.1).

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*See Appendix B for Supplemental Statements of Commissioners Kennedy, Muskie, Ochi, Otero and Reynoso.

It is both more humane and cost effective to deter people from entering the United States than it is to locate and remove them from the interior. Nevertheless, the Commission holds the view that improvements also need to be made in interior enforcement efforts. It, therefore, supports increasing INS resources not only along the borders and at ports of entry but also in the interior. The following specific actions are required for such a comprehensive effort.

II.A.1. Border Patrol Funding*

THE SELECT COMMISSION RECOMMENDS THAT BORDER PATROL FUNDING LEVELS BE RAISED TO PROVIDE FOR A SUBSTANTIAL INCREASE IN THE NUMBERS AND TRAINING OF PERSONNEL, REPLACEMENT SENSOR SYSTEMS, ADDITIONAL LIGHT PLANES AND HELICOPTERS AND OTHER NEEDED EQUIPMENT.

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*Commission vote:

The Select Commission voted on a package of proposals which form recommendations II.A.1. to II.A.3. and II.A.7. Yes-15; Pass-1.

During the past ten years, the number of undocumented/illegal migrants, as measured by apprehensions, has increased much more rapidly than the personnel and funding levels of the Border Patrol.*

At any given hour no more than 450 Border Patrol agents are directly engaged in activities to stop persons attempting to enter the United States without inspection. Lack of funds has also stretched the replacement schedule for sensor systems--introduced during the last ten years to aid the Border Patrol in detecting movement in isolated areas of the borders--to seven years, at least two years longer than the expected operating life of the systems.

Only after illegal migrants are excluded from the labor market through an employee eligibility/employer responsibility program (see Section II.B.), will border interdiction become a lower priority. For the immediate future, however, a visible deterrent must exist between ports of entry. Providing a visible deterrent will require a substantial increase in personnel. Additional equipment and technology will also be essential as the expanded use of aircraft, sensor systems and night-viewing devices will raise the effectiveness of existing personnel. The Commission, therefore, recommends that funds be made available to provide the substantial increase in the number and training of Border Patrol personnel, and the technology and equipment required for effective border interdiction.

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*Permanent work years funded for the Border Patrol increased by 42.4 percent between 1969 and 1979, while apprehensions by the Border Patrol increased by 414.5 percent during the same period.

II.A.2. Port-of-Entry Inspections*

THE SELECT COMMISSION RECOMMENDS THAT PORT-OF-ENTRY INSPECTIONS BE ENHANCED BY INCREASING THE NUMBER OF PRIMARY INSPECTORS, INSTITUTING A MOBILE INSPECTIONS TASK FORCE AND REPLACING ALL OUTSTANDING BORDER-CROSSING CARDS WITH A COUNTERFEIT-RESISTANT CARD.†

The flow of people across U.S. borders for business and pleasure has nearly overwhelmed federal inspection agencies. Additional personnel are needed to deal with this flow so that people will pass through the inspection process within an acceptable amount of time without sacrificing the effectiveness of a process which deters illegal entry. Augmented program funds will allow a mobile task force to institute an increased number of careful inspections at ports-of-entry with high rates of fraudulent entries. Such inspections, in addition to those already conducted at ports of entry, will serve as a deterrent to those persons who might otherwise seek undocumented/illegal entry to the United States and to the smuggling of these individuals.

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*Commission vote

The Select Commission voted on a package of proposals which form Recommendations II.A.1. to II.A.3. and II.A.7. Yes-15; Pass-1.

†This support of a counterfeit-resistant card does not mean the Commission supports the existing counterfeit-resistant card (ADIT). New technology may offer more cost-effective alternatives.

II.A.3. Regional Border Enforcement Posts*

THE SELECT COMMISSION RECOMMENDS THAT REGIONAL BORDER ENFORCEMENT POSTS BE ESTABLISHED TO COORDINATE THE WORK OF THE IMMIGRATION AND NATURALIZATION SERVICE, THE U.S. CUSTOMS SERVICE, THE DRUG ENFORCEMENT ADMINISTRATION AND THE U.S. COAST GUARD IN THE INTERDICTION OF BOTH UNDOCUMENTED/ILLEGAL MIGRANTS AND ILLICIT GOODS, SPECIFICALLY NARCOTICS.

These four agencies already cooperate in the El Paso Intelligence Center (EPIC) which maintains records of narcotics movement and of illegal entries. This sharing of information should be part of an organizational structure that allows the rapid deployment of joint resources to respond to emergencies or to provide for coordinated enforcement programs.

The Commission holds the view that a regional border enforcement post would coordinate the particular strengths and distinct responsibilities of each border enforcement agency. The creation of regional posts could improve interdiction of undocumented/illegal migrants, without disrupting the existing mandates of the agencies involved.†

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*Commission vote

The Select Commission voted on a package of proposals which form Recommendations II.A.1. to II.A.3. and II.A.7. Yes-15; Pass-1.

†See Section VII.B.1. on problems related to possible reorganization of these agencies.

II.A.4. Enforcement of Current Law*

THE SELECT COMMISSION RECOMMENDS THAT THE LAW BE FIRMLY AND CONSISTENTLY ENFORCED AGAINST U.S. CITIZENS WHO AID ALIENS WHO DO NOT HAVE VALID VISAS TO ENTER THE COUNTRY.

Recent U.S. experience with the Cuban push-out and the resulting "freedom flotilla" in which private U.S. citizens transported persons who did not have valid visas to the United States has been a cause for concern.[/] Though the Commission recognizes the good will behind this and other such actions on the part of U.S. citizens, U.S. law is clear with regard to aiding the entry of aliens who do not have valid visas--such assistance is illegal. Because the Select Commission believes that enforcement of the law should be consistent, it recommends that, as a matter of policy, current law be enforced against all U.S. citizens who aid an alien without a valid visa to enter the country.

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*Commission vote

Should it be U.S. policy to firmly and consistently enforce current law which says it is illegal for U.S. citizens to help an alien enter the country unless the alien has a valid visa? Yes-14; Absent-1.

[/] See Commission discussion of mass asylum in Section V of this report.

II.A.5. Nonimmigrant Visa Abuse*

THE SELECT COMMISSION RECOMMENDS THAT INVESTIGATIONS OF OVERSTAYS AND STUDENT VISA ABUSERS BE MAINTAINED REGARDLESS OF OTHER INVESTIGATIVE PRIORITIES.

Because of fiscal constraints and border enforcement priorities, INS has not had the resources to devote to interior enforcement on a broad scale. Interior investigations have been concentrated almost exclusively on likely places of employment for undocumented/illegal migrants. Failure to broaden these investigations to include those persons who overstay their visas and student visa abusers could lead to the charge that the government is interested only in undocumented/illegal aliens who have to work. Despite court-imposed limitations on INS interior enforcement procedures, interior investigations--including those involving nonimmigrant visa abuse--should be encouraged (see Recommendations VIII.A.1. to VIII.A.4.).

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*Commission vote

The Select Commission voted on a package of proposals which form Recommendations II.A.5. and II.A.6. Yes-16.

II.A.6. Nonimmigrant Document Control*

THE SELECT COMMISSION RECOMMENDS THAT A FULLY AUTOMATED SYSTEM OF NONIMMIGRANT DOCUMENT CONTROL SHOULD BE ESTABLISHED IN THE IMMIGRATION AND NATURALIZATION SERVICE TO ALLOW PROMPT TRACKING OF ALIENS AND TO VERIFY THEIR DEPARTURE. U.S. CONSULAR POSTS OF VISA ISSUANCE SHOULD BE INFORMED OF NONDEPARTURES.

The Commission finds deficiencies in the control of visa abuse. No adequate system now exists to check whether nonimmigrants leave the country in compliance with limitations on authorized stay or whether foreign students and other nonimmigrants are in status. To increase knowledge about these and other nonimmigrants from the time of their entries to the time of their departures from the United States, and to deter and apprehend visa abusers, the Commission urges the introduction of a fully automated system of nonimmigrant document control.

At present, nonimmigrants fill out a travel control document (I-94) which gives information about their arrival, initial destination in the United States and the date through which their stay in the United States has been approved by an INS inspector.* This tracking system has been plagued by underfunding, large backlogs or delays in entering the data and lost documents. An automated system of nonimmigrant document control (now in the planning stage at INS) could provide automated information on new arrivals within two days of their entry and printouts on persons overstaying their departure dates.

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*Commission vote

The Select Commission voted on a package of proposals which form Recommendations II.A.5. and II.A.6. Yes-16.

II.A.7. Deportation of Undocumented/Illegal Migrants/

THE SELECT COMMISSION RECOMMENDS THAT DEPORTATION AND REMOVAL OF UNDOCUMENTED/ILLEGAL MIGRANTS BE EFFECTED TO DISCOURAGE EARLY RETURN. ADEQUATE FUNDS SHOULD BE AVAILABLE TO MAINTAIN HIGH LEVELS OF ALIEN APPREHENSION, DETENTION AND DEPORTATION THROUGHOUT THE YEAR. WHERE POSSIBLE, ALIENS SHOULD BE REQUIRED TO PAY THE TRANSPORTATION COSTS OF DEPORTATION OR REMOVAL UNDER SAFEGUARDS.

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*One copy is retained by the alien until collected at departure; the other copy is used for recording the entry information (manually entered into an automated system) in INS records.

/Commission vote

The Select Commission voted on a package of proposals which form Recommendations II.A.1. to II.A.3. and II.A.7. Yes-15; Pass-1.

Current law allows the Attorney General to deport an alien who has been found deportable and who is not eligible for discretionary relief. Such deportation may be to a country designated by the alien if that country is willing to accept him/her or to other statutorily specified places at the discretion of the Attorney General. The Select Commission urges that, where possible, such deportations and removals of undocumented/illegal aliens be carried out to discourage early return. The Commission also believes that it is important to have higher levels of apprehension, detention and deportation throughout the year to discourage undocumented/illegal aliens from entering or remaining in the United States. It therefore recommends that adequate funds be made available for these purposes, but believes that in the case of deportation, required departure or removal under safeguards from the United States, aliens should be required to pay their own transportation costs when able to do so.

II.A.8. Training of INS Officers*

THE SELECT COMMISSION RECOMMENDS HIGH PRIORITY BE GIVEN TO THE TRAINING OF IMMIGRATION AND NATURALIZATION SERVICE OFFICERS TO FAMILIARIZE THEM WITH THE RIGHTS OF ALIENS AND U.S. CITIZENS AND TO HELP THEM DEAL WTIH PERSONS OF OTHER CULTURAL BACKGROUNDS. FURTHER, TO PROTECT THE RIGHTS OF THOSE WHO HAVE ENTERED THE UNITED STATES LEGALLY, THE COMMISSION ALSO RECOMMENDS THAT IMMIGRATION LAWS NOT BE SELECTIVELY ENFORCED IN THE INTERIOR ON THE BASIS OF RACE, RELIGION, SEX OR NATIONAL ORIGIN.

In the course of its public hearings and consultations, the Select Commission has met many INS representatives who are dedicated civil servants, showing great sensitivity to aliens they encounter in the course of their work. Nevertheless, the Commission is mindful of the potential for abuse in the enforcement of immigration law. Opponents of increased enforcement who have testified before the Commission contend that enforcement practices are disruptive of human lives and the economy, and disrespectful of the civil liberties of aliens and U.S. citizens. Also, they argue that some INS personnel have disregarded the

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*Commission vote
Yes-15; Pass-1.

civil rights of legal aliens and are hostile towards persons with foreign accents or who may appear foreign. To avoid the possibility of such abuse as a result of its recommendations for enhanced enforcement, the Commission recommends that the strengthening of enforcement capabilities be accompanied by strong, new measures to further professionalize the Immigration and Naturalization Service. Such measures should improve the responsiveness and sensitivity of INS employees to individual rights and liberties (see Recommendation VII.B.3.). To give additional protection to individual rights and liberties, the Select Commission urges that INS enforcement in the interior be free of bias based on national origin, race, religion or sex.

II.B. ECONOMIC DETERRENTS IN THE WORKPLACE*

Introduction

The vast majority of undocumented/illegal aliens are attracted to this country by employment opportunities. Most are underemployed or unemployed in their home countries, and however low their income is in the United States, it is many times greater than what they have earned previously. As long as the possibility of employment exists, men and women seeking economic opportunities will continue to take great risks to come to the United States, and curbing illegal immigration will be extremely difficult. The Commission has concluded that the success of any campaign to curb illegal migration is dependent on the introduction of new forms of economic deterrents.

Modest increases in personnel and resources over the past decade for the Immigration and Naturalization Service (INS), as well as for U.S. Customs border forces, the State Department Consular Service and Department of Labor investigations have failed to stop millions of migrants from entering the United States illegally, to apprehend those who are already here or to significantly limit their participation in the labor market. Even the substantial increases in funds, equipment and personnel recommended earlier by the Select Commission for border and interior enforcement, while vital to the Commission's three part program to curtail the flow of illegal migrants, will not, by themselves, accomplish that purpose. Further, without the initiation of strong, new efforts to curtail illegal migration, whether it occurs as the result of movement across U.S. borders or through visa abuse, any attempt to regularize the status of millions of undocumented/illegal aliens already living in the United States could serve as an inducement for further illegal immigration.

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*See Appendix B for Supplemental Statements of Commissioners Harris, Hesburgh, Holtzman, Kennedy, Marshall, McClory, Ochi, Otero, Reynoso, Rodino and Simpson on this issue.

II.B.1. Employer Sanctions Legislation*

THE SELECT COMMISSION RECOMMENDS THAT LEGISLATION BE PASSED MAKING IT ILLEGAL FOR EMPLOYERS TO HIRE UNDOCUMENTED WORKERS.

Current federal law provides no basis for the prosecution of employers who knowingly hire undocumented/illegal aliens.[/] Additional enforcement funds could, of course, expand current monitoring efforts by the Department of Labor and the Immigration and Naturalization Service--to investigate violations of labor and immigration laws respectively--but such monitoring would not be effective in the absence of employer sanctions. Even if an employer is found to be employing undocumented workers, the penalty is merely the cost of finding and training replacements. Furthermore, the employer is free to hire still more undocumented/illegal aliens without incurring any additional penalties.

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*Commission votes

Do you favor employer sanctions? Yes-14; No-2.

Do you favor employer sanctions with some existing form of identification? Yes-9; No-7.

Do you favor employer sanctions with some system of more secure identification? Yes-8; No-7; Pass-1.

[/] While a number of employer sanctions bills have been introduced in Congress during the past decade, none have become law. (Two, H.R. 16188 [92nd Congress] and H.R. 982 [93rd Congress], passed the House of Representatives but not the Senate.) Only the Farm Labor Contractor Registration Act currently prohibits farm labor contractors from knowingly hiring aliens unauthorized to work.

The Congress has several times considered the institution of sanctions against employers who hire aliens unauthorized to work in the United States. "Knowing" employment of undocumented/illegal migrants has generally been the basis of employer sanctions legislation; the 1977 proposals of President Jimmy Carter provided sanctions against those who demonstrated a "pattern or practice" of employing undocumented/illegal workers.

Without an enforcement tool to make the hiring of undocumented workers unprofitable, efforts to prevent the participation of undocumented/illegal aliens in the labor market will continue to meet with failure. Indeed, the absence of such a law serves as an enticement for foreign workers. The Commission, therefore, believes some form of employer sanctions is necessary if illegal migration is to be curtailed.

Nevertheless, to monitor uniformly the entire U.S. labor market under employer sanctions legislation would not, in the Commission's view, be desirable. To investigate all U.S. businesses regardless of size would not allow the concentration of enforcement resources on those businesses and firms that pose the real enforcement problems.

Although sanctions should apply to all employers, many Commission members believe that small businesses employing only a few persons should not be the target of employer sanctions enforcement efforts. The number of employees involved is not great enough to justify the expenditure of funds and personnel required to monitor these firms effectively. Rather, it is the businesses with relatively large numbers of employees--perhaps 10 to 15 and above--that should require the attention of those responsible for enforcing an employer responsibility law. The Commission supports enforcement efforts which would focus on these larger employers to ensure that enforcement funds and personnel will be concentrated on those businesses that pose the greatest incentives for illegal immigration.

Employers found to be in violation of employer sanctions law should, in the view of many Commissioners, be subject to civil penalties. These Commission members favor the imposition of civil over criminal penalties since they are aware of the difficulties--high costs and personnel requirements--which often frustrate successful criminal prosecutions. Nevertheless, while these Commissioners hold the view that substantial civil penalties provide the best response to employers who violate an employer responsibility law, they do not entirely rule out criminal penalties for those employers who are guilty of flagrant and extended violations of the law following the imposition of civil penalties.

Several Commissioners have suggested a series of graduated penalties related to the seriousness--frequency and magnitude--of the offense which would begin only after an employer has received an informal, but recorded notice that he/she is in violation by knowingly hiring an undocumented worker or failing to comply with the administrative requirements of an employer responsibility law. This series of penalties is presented here as an example of the type of system which might be enacted as part of any employer sanctions legislation. Selection among these penalties and the establishment of a fine would depend on the degree of employer compliance or resistance.

- Administrative citation. Served on an employer by a delegated agent of the Attorney General whenever there is a determination that an employer has knowingly hired an undocumented/illegal migrant or is guilty of gross noncompliance in keeping records or filing forms as required.
- Civil fine of up to $1,000 per undocumented/illegal migrant employed. Administratively levied on employers by a delegated agent of the Attorney General for a second offense of knowingly hiring an undocumented/illegal migrant or blatantly disregarding employer responsibility requirements to secure and record information on all newly hired employees.

- Injunction in a federal district court. Secured by U.S. attorneys in cases where employers have continued to knowingly hire undocumented/illegal migrants after civil penalties had been applied. Evidence would consist of knowingly hiring undocumented/illegal migrants or the continued refusal to comply with the employer responsibility requirements.

The Commission has also been concerned about the functioning of an employer-appeals mechanism. An administrative citation could be appealed, as could the administrative fine resulting from a serious offense. Administrative fines themselves could be resisted by the employer and then collected only through civil suits. In these circumstances the employer would be given ample opportunity for defense, but without preventing the ongoing enforcement of the law. Second offenses could bring fines while an administrative citation was being appealed; an injunction could be brought while the appeal of an administrative fine was pending.

The Commission has also discussed penalties that could be imposed on those who seek undocumented/illegal employment. Some Commissioners hold the opinion that deportation represents no more than a temporary visit home for most undocumented workers and that, as such, it remains an ineffective deterrent to illegal entry. These Commission members believe other penalties must be imposed on those aliens who work illegally in the United States if illegal entry is to be effectively discouraged. Most Commissioners, however, argue that the imposition of penalties, in addition to that of deportation, is unnecessary and unworkable. By virtue of his/her presence in the United States, an undocumented/illegal alien is subject to deportation. To further penalize his/her employment will simply complicate and further slow an already overburdened legal process.

To protect the rights of employers and employees alike, the Commission has considered the institution of a system which would facilitate establishing employment eligibility. It acknowledges the criticism leveled at previous employer sanctions legislation on the basis of the vague, and therefore unenforceable, requirement that employers must knowingly hire undocumented workers. It, therefore, holds the view that an effective employer sanctions system must rely on a reliable means of verifying employment eligibility. Lacking a dependable mechanism for determining a potential employee's eligibility, employers would have to use their discretion in determining that eligibility. The Select Commission does not favor the imposition of so substantial a burden on employers and fears widespread discrimination against those U.S. citizens and aliens who are authorized to work and who might look or sound foreign to a prospective employer. Most Commissioners, therefore, support a means of verifying employee eligibility that will allow employers to confidently and easily hire those persons who may legally accept employment. Without some means of identifying those persons who are entitled to work in the United States, the best-intentioned employer would be reluctant to hire anyone about whose legal status he/she has doubts.

Many of these Commissioners hold the view that the entire workforce in the United States--U.S. citizens and permanent residents included--should bear the same responsibility to verify their eligibility. To be nondiscriminatory, they believe, any employee eligibility system must apply equally to each member of the U.S. workforce--whether that individual be an alien authorized to work in this country or a U.S. citizen. These Commissioners argue that unless such requirements are uniform, the potential for employer discrimination--which the Commission seeks to avoid--would once again become a threat to those U.S. citizens or lawful permanent residents who might appear foreign in speech or appearance. Further, they believe that to burden one group of eligible workers with a requirement to establish eligibility while exempting another--when both have the same right of employment--is in its own way as great a discrimination as that which the system seeks to avoid.

Several Commissioners believe, however, that imposing an employment verification burden on the entire U.S. workforce is an overreaction to undocumented/illegal immigration. Undocumented/illegal aliens, these Commission members believe, do not pose enough of a problem to U.S. society to warrant the imposition of an employment eligibility requirement on all U.S. workers.

As part of its discussion of this issue, the Select Commission has also considered a number of mechanisms which would allow a prospective employee to establish his/her eligibility for employment. Its discussion has focused on the use of existing forms of identification, the improvement of these existing forms, for example a counterfeit-resistant social security card, or new, secure identifiers, such as a call-in data bank or work-eligibility card. However, the Commission has been unable to reach a consensus as to the specific type of identification that should be required for verification.

Some Commissioners find the creation of any new form of work identification unnecessary, costly and/or potentially harmful to civil liberties. They believe that the use of one or more existing forms of identification (such as the birth certificate, social security card or alien identification card) would provide a reasonably reliable, nondiscriminatory means of verifying the eligibility of persons to work in the United States.

Other Commissioners find these existing forms of identification unreliable, but would support their use if they could be made more secure. Still other Commission members urge that employer sanctions be supported by a new, more secure system of employee verification. They conclude that a new system is necessary, more reliable and worth the cost. These Commissioners also argue that a system based on a new, more secure form of identification when limited to use in hiring will actually be less discriminatory than any system based on existing forms of identification. Without a more dependable method of verifying employment eligibility, they believe, the potential for discrimination is a far greater threat to individual rights than is any new, more secure method of employment eligibility identification.

Despite these differences of opinion as to the coverage of and specific mechanisms for verifying employee eligibility, Commissioners agree on the principles that should underlie a verification system: reliability, protection of civil rights and civil liberties and cost effectiveness.

II.B.2. Enforcement Efforts in Addition to Employer Sanctions*

THE SELECT COMMISSION RECOMMENDS THAT THE ENFORCEMENT OF EXISTING WAGE AND WORKING STANDARDS LEGISLATION BE INCREASED IN CONJUNCTION WITH THE ENFORCEMENT OF EMPLOYER RESPONSIBILITY LEGISLATION.

To ensure that employer sanctions and the employee eligibility identification system result in the improvement of wages and working conditions for those authorized to work in the United States, the Select Commission urges the increased enforcement of existing wage and working standards legislation. It supports the necessary increases in budget, equipment and personnel that will allow the Department of Labor's Employment Standards Administration (using the Federal Labor Standards Act, government contracting laws and the Farm Labor Contractors Registration Act) to increase its efforts to monitor the workplace. Similarly, the Commission supports increases in the INS budget to allow INS investigators to conduct area control operations where they have probable cause to believe that undocumented/illegal migrants are already working for certain employers or have recently been hired in violation of an employer responsibility law (see Recommendation VIII.A.3.).

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*Commission vote

Should enforcement of wage and working standards legislation be increased in conjunction with enforcement of employee eligibility/employer responsibility? Yes-14; No-1; Pass-1.

II.C. LEGALIZATION*

THE SELECT COMMISSION RECOMMENDS THAT A PROGRAM TO LEGALIZE UNDOCUMENTED/ILLEGAL ALIENS NOW IN THE UNITED STATES BE ADOPTED.

The Select Commission holds the view that the existence of a large undocumented/illegal migrant population should not be tolerated. The costs to society of permitting a large group of persons to live in illegal, second-class status are enormous. Society is harmed every time an undocumented alien is afraid to testify as a witness in a legal proceeding (which occurs even when he/she is the victim), to report an illness that may constitute a public health hazard or disclose a violation of U.S. labor laws.

In seeking a solution to the problem of a large, resident undocumented alien population, the Select Commission has considered a range of programs, including massive deportation efforts, the use of existing enforcement procedures and legalization. Attempts at massive deportation would be destructive of U.S. liberties, costly, likely to be challenged in the courts and, in the end, ineffective. The only time in U.S. history when such a massive deportation effort occurred was in the mid-1950s when the Immigration and Naturalization Service (INS) expelled or repatriated more than one million aliens. This was done at tremendous cost in terms of both money and personnel, and, more importantly, violated the civil liberties of many Mexican Americans who were forcibly repatriated to Mexico. Such an effort would not be tolerated today. However carefully designed and implemented, any program to remove 3.5 to 6 million people* would almost certainly violate the rights of many legal residents without reaching more than a small proportion of those aliens lacking proper documentation.

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*Commission vote

Recommendation flows from the combined votes for Recommendations II.C.1. to II.C.4.

See Appendix B for Supplemental Statements of Commissioners Hesburgh, Kennedy, Marshall, Ochi, Otero, Reynoso, Rodino and Simpson on this issue.

As continuing to employ existing enforcement techniques merely assures the continuation of current problems, the Commission holds the view that legalization is a realistic response to the problem of resident undocumented/illegal aliens. It is of the opinion that legalization--following the institution of new, more effective enforcement measures--would be in the national interest of the United States for many reasons:

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*This number is based on estimates in a report made by Census Bureau researchers for the Select Commission.

- Qualified aliens would be able to contribute more to U.S. society once they came into the open. Most undocumented/ illegal aliens are hardworking, productive individuals who already pay taxes and contribute their labor to this country.
- No longer exploitable at the workplace because they are unwilling to avail themselves of the protection of U.S. law, legalized aliens would no longer contribute to the depression of U.S. labor standards and wages.
- Legalization is an essential component of the Commission's total package of recommendations to stem the flow of undocumented/illegal migrants and will aid in the enforcement of U.S. immigration laws. It will enable INS to target its enforcement resources on new flows of undocumented/illegal aliens.
- For the first time, the United States would have reliable information about the sources (specific towns, villages and provinces) of undocumented/illegal migration and the characterstics of undocumented/illegal aliens. This information will further facilitate enforcement efforts to curtail future flows. It will also enable the United States to focus bilateral or unilateral aid and investment programs in ways that might deter migration at its source.

Some Commissioners also believe that legalization would acknowledge that the United States has at least some responsibility for the presence of undocumented/illegal aliens in this country since U.S. law has explicitly exempted employers from any penalty for hiring them. Some Commissioners also argue that because of that partial responsibility, the alternatives to legalization--continuing to largely ignore undocumented/illegal aliens or initiating mass mass deportation efforts--would, apart from being harmful to the United States, constitute unfair penalties on aliens and their families. Some of these individuals already have the qualifications to reside here legally, although they do not know it.

In developing the following legalization recommendations, the Select Commission has been guided by two major principles:

- The legalization program should be consistent with U.S. interests; and
- The legalization program should not encourage further undocumented migration.

The specific provisions of the Commission's recommendations, described below, are designed to implement these two goals.

II.C.1. Eligibility for Legalization[*]

THE SELECT COMMISSION RECOMMENDS THAT ELIGIBILITY BE DETERMINED BY INTERRELATED MEASUREMENTS OF RESIDENCE--DATE OF ENTRY AND LENGTH OF CONTINUOUS RESIDENCE--AND BY SPECIFIED GROUNDS OF EXCLUDABILITY THAT ARE APPROPRIATE TO THE LEGALIZATION PROGRAM.

The Commission recommends that eligibility be limited to undocumented migrants who illegally entered the United States or were in illegal status prior to January 1, 1980, and who, by the date of enactment of legislation, have continuously resided in the United States for a minimum period of time to be set by Congress.[†] Continuous residency does not preclude visits of short duration to an alien's country of origin.

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[*] Commission vote

Eligibility should be determined by interrelated measurement of residence. No one should be eligible who was not in the country before January 1, 1980. Congress should establish a minimum period of continuous residency to further establish eligibility. Yes-16.

The exclusion grounds for undocumented/illegal migrants who otherwise qualify for legalization should be appropriate to the legalization program. Yes-12; Pass-1; Absent-2.

[†] For visa abusers (those who entered legally but overstayed or acted in contravention of their visas), the period of continous residency should begin at the time of visa abuse rather than at the time of entry.

In setting a cut-off date of January 1, 1980, the Commission has selected a date that will be near enough to the enactment of legislation to ensure that a substantial portion of the undocumented/illegal alien population will be eligible, but that predates public discussion of the likelihood of a Commission recommendation in favor of legalization. The Commission does not want to reward undocumented/illegal aliens who may have come to the United States, in part at least, because of recent discussions about legalization, nor does it want to stimulate further illegal migration by recommending a date that will follow the release of its report. On the other hand, the Commission has not chosen a very early cutoff date (such as the 1970 date incorporated in the Carter Administration's 1977 proposals) because it would permit the participation of too few undocumented/illegal aliens, leaving the United States with a substantial underclass still in illegal status and without the information that will help enforcement efforts aimed at new undocumented/illegal entries.

The number of persons eligible for a legalization program will vary as a result of the length of continuous U.S. residence required. If the residence requirement is set at two years, the Select Commission staff estimates that approximately 60 percent of those undocumented/illegal aliens now in the United States would qualify for legalization. Should the residency requirement be increased to three years, an estimated 45 percent of those with undocumented status would qualify.

It would be inadvisable, at this point, for the Commission to recommend a specific number of years that would determine the length of continuous residence required for legalization. Without knowing how quickly Congress will act in passing legislation, the Commission cannot make this decision. Many Commissioners recommend that Congress choose a period of time that balances the desire for incorporating a substantial number of undocumented/ illegal aliens into U.S. society with the necessity of limiting that participation to those who have acquired some equity in this country.

The Commission also recommends that the exclusion grounds for undocumented/illegal migrants who otherwise qualify for legalization should be appropriate to the legalization program. Commissioners have expressed a range of views regarding the meaning of "appropriate." Some Commissioners believe that undocumented/illegal aliens should be subject to the same grounds of exclusion as immigrants applying for admission except those that relate to illegal entry or presence in the United States. Other Commissioners believe that only the most serious grounds should apply. They argue that if undocumented/illegal aliens are to be persuaded to come forward, the grounds of exclusion must be limited to criminal or other such offenses. Still other Commissioners have argued that Congress should review this issue in the context of the recommended review of the overall grounds of exclusion. (See Recommendation VII.D.1.).

Previous amnesty plans, proposing changes in Section 249 of the Immigration and Nationality Act, have provided an ongoing mechanism through which undocumented/illegal aliens could establish eligibility for registration as permanent resident aliens. A drawnout mechanism for establishing eligibility for legalization, however, will only perpetuate an already serious problem. The Select Commission favors a specified, one-time only period during which applicants for legalization could come forward.

An examination of the experience of other countries may be helpful to Congress in setting the limits of the program. The time allotted for the Australian legalization program was only three months, and the period of Canadian amnesty was only 60 days. Both of these periods proved to be too short. It was impossible to gain the trust of the undocumented/illegal population or even communicate adequately the provisions of the programs within such short time spans. In the view of the Commission, a longer eligibility period, such as one year, would be more appropriate.

II.C.2. Maximum Participation in the Legalization Program*

THE SELECT COMMISSION RECOMMENDS THAT VOLUNTARY AGENCIES AND COMMUNITY ORGANIZATIONS BE GIVEN A SIGNIFICANT ROLE IN THE LEGALIZATION PROGRAM.

Commission research has demonstrated that legalization programs in Canada, Europe and Australia have all had significantly lower numbers of applicants than were expected. Unable to overcome the personal fears and suspicions of those who might have been eligible for legalization, these programs failed to attract maximum participation. The Select Commission recommends that voluntary agencies (VOLAGS) and community organizations be given a significant role in the legalization program. The Commission holds the view that such participation would encourage more eligible undocumented/illegal aliens to come forward. Most voluntary agencies have proven themselves to be highly reponsible and responsive participants in the implementation of U.S. refugee policy. The Commission believes that they would be effective agents of a legalization program.

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*Commission vote

Yes-16.

Commissioners support the following measures to encourage the maximum participation of qualified undocumented/illegal aliens in a legalization program:

- Voluntary agencies should engage in outreach efforts that will advise as many undocumented/illegal aliens as possible of their eligibility for legalization.
- This effort should begin as soon as possible after legislative enactment in order to minimize the likelihood of otherwise qualified applicants being apprehended and deported as the result of the immigration law enforcement that will continue during the intervening period. Extensive apprehensions of this type could raise concerns among other undocumented/illegal aliens regarding the legitimacy of the government's legalization intentions.
- In order to attract as many undocumented/illegal aliens as possible, the VOLAGS must overcome the fears that these aliens have of any contact with immigration authorities. The initial processing of claims should be done by voluntary agencies and community organizations in order to assure undocumented/illegal aliens that they have a method of establishing their qualifications for legalization without subjecting themselves to immediate deportation. The Immigration and Naturalization Service would make all final determinations of eligibility.

II.C.3. Legalization and Enforcement*

THE SELECT COMMISSION RECOMMENDS THAT LEGALIZATION BEGIN WHEN APPROPRIATE ENFORCEMENT MECHANISMS HAVE BEEN INSTITUTED.

The Commission believes that a legalization program is a necessary part of enforcement, but it does not believe that the United States should begin the process of legalization until new enforcement measures have been instituted to make it clear that the United States is determined to curtail new flows of undocumented/illegal aliens.

Without more effective enforcement than the United States has had in the past, legalization could serve as a stimulus to further illegal entry. The Select Commission is opposed to any program that could precipitate such movement. Further, the absence of effective enforcement could lead to a low participation rate in the legalization program. Continuation and enhancement of enforcement efforts in this country should encourage many undocumented/illegal aliens to regularize their status under the legalization program. Persons found as a result of Immigration Service operations would be given the opportunity to apply for the program if they appear to be qualified.

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*Commission vote

Yes-16.

II.C.4. Unqualified Undocumented/Illegal Aliens*

THE SELECT COMMISSION RECOMMENDS THAT THOSE WHO ARE INELIGIBLE FOR A LEGALIZATION PROGRAM BE SUBJECT TO THE PENALTIES OF THE IMMIGRATION AND NATIONALITY ACT IF THEY COME TO THE ATTENTION OF IMMIGRATION AUTHORITIES.

The Commission rejects the use of any temporary programs that would give special status to those who entered illegally or fell out of status after January 1, 1980. Even though many of these individuals might be hard-working and otherwise desirable persons, they have not established the equity in our society deemed necessary for registration as permanent resident aliens.

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*Commission vote

Yes-12; No-4.

See Recommendation II.D.2. for views on methods to ensure that undocumented/illegal aliens do not subject themselves to deportation while trying to establish eligibility for legalization.

The Commission therefore recommends that those who are ineligible for legalization be subject to the provisions for voluntary departure or deportation in the Immigration and Nationality Act.

Some Commissioners who voted against this recommendation argue that it is impractical and still others argue that it would create undue hardships not only for undocumented/illegal aliens but for U.S. citizens as well. They argue that as many as 2 to 3 million undocumented/illegal aliens may be ineligibile for legalization and that attempts to deport this number of individuals would be costly, ineffective, and would still leave the United States with a substantial underclass population. These Commissioners believe those ineligible for legalization should be offered temporary status with the opportunity, after a few years, of qualifying for permanent residence.

Many of the Commission majority also recognize that mass deportation efforts would be inimical to the interests of the United States. They hold the view that Congress should act quickly to establish a legalization program that will include the majority of undocumented/illegal aliens currently in this country. They hope that such an action will mitigate the need for large-scale deportation without undermining the commitment to curbing illegal migration. The message of the United States regarding undocumented/illegal aliens, they argue, must be clear: this nation will offer legal permanent residence to those who illegally entered during a period of ambiguity in U.S. attitudes towards illegal migration, but it will no longer tolerate the continued entry or employment of an illegal, second-class group of residents.

SECTION III. THE ADMISSION OF IMMIGRANTS

Introduction

Today's immigrant selection system has evolved from two centuries of policies, as indicated in Table 3. For the first century, immigration was unrestricted, encouraging all to come and build a new nation. This open policy was only slightly tempered in the late nineteenth century by a series of successive bars placed on the immigration of certain groups of persons. The trend toward a more restrictive policy culminated in the national origins quota system of the 1920s which governed immigrant admissions for the next four decades. Since 1965, however, when differential national quotas were abolished, U.S. immigration policy has evolved increasingly toward a system in which provisions apply equally to prospective immigrants regardless of place of birth (see Appendix D, Evolution of Key Provisions Relating to Immigration).

Using the criteria of fairness and promotion of the national interest, the Commission has evaluated the current immigration admission system and has found that many of the criticisms concerning it are well-founded. Although the existing system provides for the reunification of families--some without numerical restriction--and for the immigration of certain needed workers while still protecting the U.S. labor market, both goals

TABLE 3

OUTLINE OF U.S. IMMIGRATION POLICY, 1783-1980

1783	George Washington proclaims that the "bosom of the America is open to receive not only the opulent and respectable stranger, but the oppressed and persecuted of all nations and religions, whom we shall welcome to a participation of all our rights and privileges..."
1819	For the first time, the U.S. government begins to count immigrants.
1864	Congress passes law legalizing importing of contract laborers.
1875	The first federal restriction on immigration prohibits prostitutes and convicts.
1882	Congress curbs Chinese immigration.
	Congress excludes convicts, lunatics, idiots and persons likely to become public charges, and places a head tax on each immigrant.
1885	Legislation prohibits the admission of contract laborers.
1891	Ellis Island opened as immigrant processing center.
1903	List of excluded immigrants expands to include polygamists and political radicals such as anarchists.
1906	Naturalization Act makes knowledge of English a requirement.
1907	Congress establishes Dillingham Immigration Commission.
	Head tax on immigrants is increased; added to the excluded list are those with physical or mental defects that may affect their ability to earn a living, those with tuberculosis and children unaccompanied by parents.
	Gentlemen's agreement between U.S. and Japan restricts Japanese immigration.
1917	Congress requires literacy in some language for those immigrants over 16 years of age, except in cases of religious persecution, and bans virtually all immigration from Asia.
1921	Quotas are established limiting the number of immigrants of each nationality to three percent of the number of foreign-born persons of that nationality living in the United States in 1910. Limit on European immigration set at about 350,000.
1924	National Origins Law (Johnson-Reed Act) sets temporary annual quotas at two percent of nationality's U.S. population as determined in 1890 census and sets an upward limit of 150,000 upon immigration in any one year from non-Western Hemisphere countries.
1929	Quotas of 1924 permanently set to be apportioned according to each nationality's proportion of the total U.S. population as determined in 1920 census.
1939	Congress defeats refugee bill to rescue 20,000 children from Nazi Germany despite willingness of American families to sponsor them, on the grounds that the children would exceed the German quota.
1942	Bilateral agreements with Mexico, British Honduras, Barbados and Jamaica for entry of temporary foreign laborers to work in the United States—bracero program.
1943	Chinese Exclusion Laws repealed.

1946 Congress passes War Brides Act, facilitating immigration of foreign-born wives, husbands and children of U.S. armed forces personnel.

1948 Congress passes Displaced Persons Act (amended in 1950), enabling 400,000 refugees to enter the United States.

1950 Internal Security Act increases grounds for exclusion and deportation of subversives; aliens required to report their addresses annually.

1952 Immigration and Nationality Act of 1952 (McCarran-Walter Act):

- reaffirms national origins system giving each nation a quota equal to its proportion of the U.S. population in 1920;
- limits immigration from Eastern Hemisphere to about 150,000; immigration from Western Hemisphere remains unrestricted;
- establishes preferences for skilled workers and relatives of U.S. citizens; and
- tightens security and screening standards and procedure.

1953 Refugee Relief Act admits over 200,000 refugees outside existing quotas.

1957 Refugee-Escapee Act defines refugee-escapee as any alien who has fled from any Communist country or from the Middle East because of persecution or the fear of persecution on account of race, religion or political opinion.

1960 Cuban refugee program established.

1964 United States ends bracero program.

1965 Immigration and Nationality Act Amendments of 1965:

- abolish the national origins system;
- establish an annual ceiling of 170,000 for the Eastern Hemisphere with a 20,000 per-country limit; immigrant visas distributed according to a seven-category preference system, favoring close relatives of U.S. citizens and permanent resident aliens, those with needed occupational skills and refugees; and
- establish an annual ceiling of 120,000 for the Western Hemisphere with no preference system or per-country limit.

1975 Indochinese Refugee Resettlement Program begins.

1976 Immigration and Nationality Act amendments of 1976:

- extend the 20,000 per-country limit and the seven-category preference system to the Western Hemisphere.
- maintain the separate annual ceilings of 170,000 for the Western Hemisphere.

1978 Immigration and Nationality Act Amendments of 1978 combine the ceilings for both hemispheres into a worldwide total of 290,000, with the same seven-category preference system and 20,000 per-country limit uniformly applied.

1978 Congress establishes the Select Commission on Immigration and Refugee Policy.

Congress passes law excluding and deporting Nazi persecutors.

1980 Refugee Act establishes clear criteria and procedures for admission of refugees.

are frequently frustrated either by the restrictive criteria applied or through the interaction of specific provisions with patterns of demand. For instance, while strong emphasis is now placed on family reunification, husbands, wives and children can be separated for years because per-country and/or preference limitations have been reached. The low priority accorded nonfamily immigrants and a cumbersome labor certification process for clearing them for admission has made it difficult for persons without previous family ties in the United States or extensive training and skills to immigrate.

In an effort to learn more about the current immigrant selection system and the effect of immigrants on the United States, the Commission undertook a major review of existing research on immigrants and conducted some research of its own. Together with additional information developed in Commission hearings and consultations, this research has been invaluable to the Commission in evaluating existing policy and in developing a new immigrant admissions system which will, in the Commission's view, serve the national interest now and in the future. Although all existing literature cannot be summarized here, the following highlights what is known about the characteristics and the impact of immigrants on the United States.*

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*Extensive research data and analysis will be submitted to the President and the Congress prior to May 1 as backup to this report

Numbers of Immigrants

As can be seen from Table 4, immigration in the 1970s rose considerably above levels for the decades which immediately preceded it.* Contributing to this increase were the changes in the 1965 Act which led to an average annual increase of 100,000 immigrants during the ten years after its enactment. Immigrant admissions, as shown in Table 5, have increased even more significantly in the past few years, due largely to the numerically unlimited adjustment of previously paroled Cuban and Indochinese refugees.

Although these increases have coincided with a declining U.S. birth rate, thereby increasing the proportion of population growth due to immigration, that proportion is still far smaller than it was during the decades of high immigration which bracketed the turn of the century, as may be seen on Table 4. In fact, in the decade between 1900 and 1910, immigration accounted for more than 40 percent of U.S. population growth when the population was growing at more than 2 percent. In the 1970s, when the population was growing at less than 1 percent, immigration accounted for less than 25 percent of that growth.

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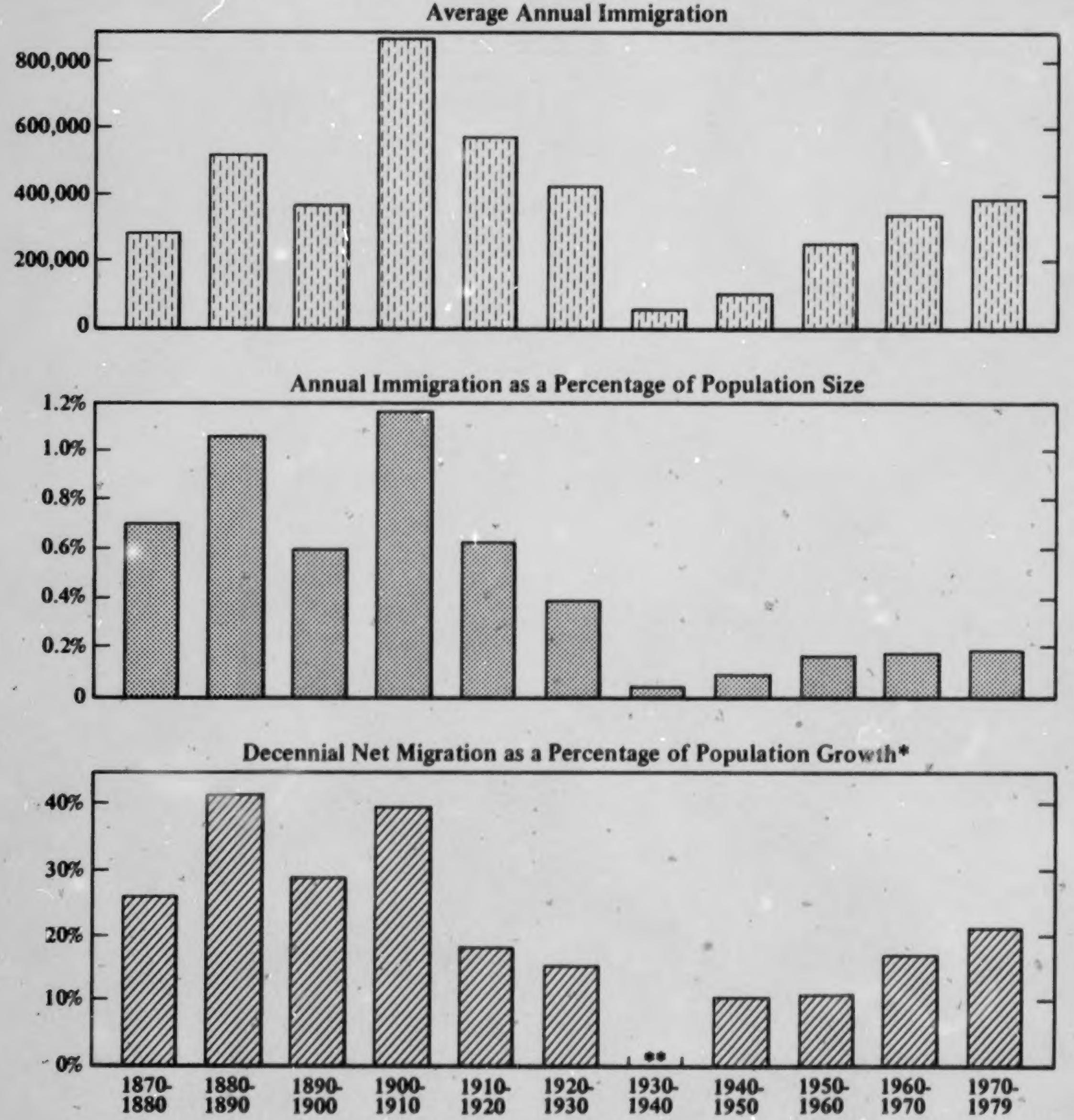
*Although there is no reliable data on the rate of emigration from the United States, many research studies estimate this factor at about 30 percent of overall immigration.

TABLE 4

LEVELS AND RATES OF U.S. IMMIGRATION, 1870-1979



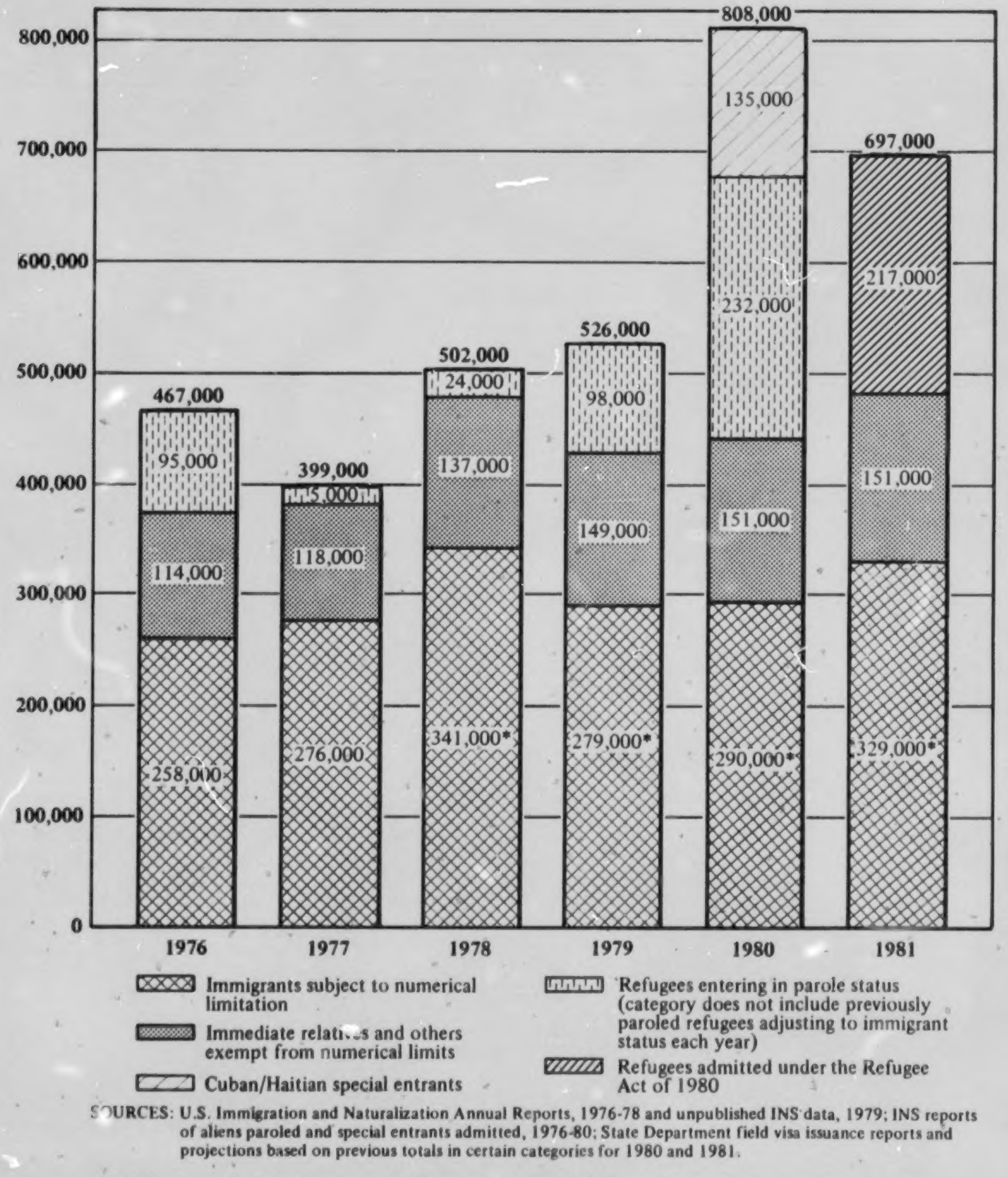
*Decennial net migration as a percentage of population growth equals total decennial population increase minus natural population increase (births and deaths) divided by total population increase.

**Emigration exceeded immigration by 85,000.

SOURCE: "Immigrants: How Many?" Select Commission on Immigration and Refugee Policy, January 1980.

TABLE 5

U.S. GROSS IMMIGRATION, 1976-1981



SOURCES: U.S. Immigration and Naturalization Annual Reports, 1976-78 and unpublished INS data, 1979; INS reports of aliens paroled and special entrants admitted, 1976-80; State Department field visa issuance reports and projections based on previous totals in certain categories for 1980 and 1981.

* Includes part of the 145,000 extra numerically limited visas issued as a result of the Silva v. Levi court decision.

By the end of the 1970s, the proportion of foreign-born persons in the United States was actually lower than at any previous point since 1850, when statistics were first kept and one out of every ten U.S. residents was foreign-born. By 1970 it was down to 4.7 percent from a high of 14.7 percent in 1890.

Sources of Immigration

The sources of immigration have changed dramatically over the years. During the colonial period, most voluntary immigrants came from the British Isles and Northern Europe; thousands of Africans were, of course, transported involuntarily to this country. From 1820 to 1860, 95 percent of all immigrants to the United States came from Northern and Western Europe. That proportion went down between 1861 and 1900 to only 68 percent, as a larger proportion of immigrants came from Southern and Eastern Europe and other North American countries. Between 1901 and 1930, Southern and Eastern Europe were responsible for almost 70 precent of U.S. immigration.

It was this large influx of immigrants from Eastern and Southern Europe that provoked the flagrantly discriminatory 1921 immigration law and national origins quotas. While immigration was cut overall, the total quota for Northern and Western Europe was lowered by only 29 percent, whereas that for Southern and Eastern Europe suffered an 87 percent reduction. The quota for

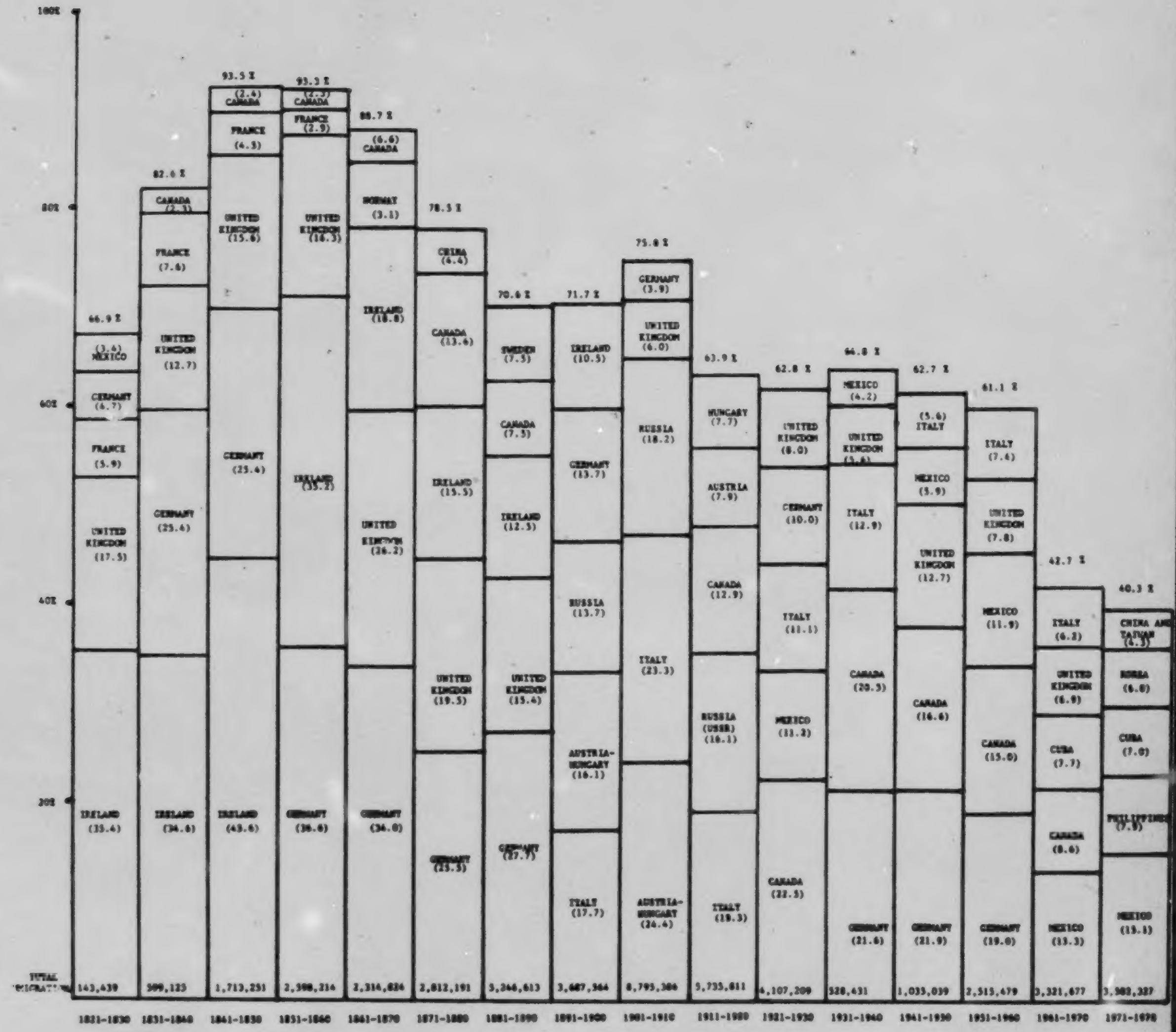
Italy, for instance, was reduced from 42,057 to 3,845; Poland's from 30,977 to 5,982. In 1924 the Act was changed still further to provide Northern and Western Europe with 84 percent of the national quotas, Southern and Eastern Europe with 14 percent and other areas of the Eastern Hemisphere with 2 percent.

With no restriction on the Western Hemisphere, immigration from Latin America began to increase. Between 1931 and 1960 the proportion of Latin American immigrants averaged 15 percent compared to 41 percent for Northern and Western Europe and less than 40 percent for Southern and Eastern Europe. Then, between 1961 and 1970, Latin American immigration went up to 39 percent. With the abolition of national origin quotas in 1965, Asian immigration immediately increased to 13 percent of the total. In part because of refugee flows, immigration from Asian nations has continued to grow, and now accounts for over one-third of total immigration to the United States.

As may be seen by Table 6, a relatively small number of nations always have tended to dominate immigration. This has been true regardless of immigration policy. Whether there has been unlimited immigration (with qualifying exclusions), Eastern Hemisphere limitations with or without national origin quotas, Eastern and Western Hemisphere ceilings, or a worldwide ceiling with equal per country ceilings, the difference has been in the patterns of dominance.

TABLE 6

THE FIVE COUNTRIES WITH HIGHEST LEVELS OF IMMIGRATION TO THE UNITED STATES BY DECADE, 1821-1978



SOURCE: Based on figures in Tables 13 and 14, INS Annual Report, 1978.

NOTE: Reporting of immigration via U.S. land borders with Mexico and Canada was not fully established until 1908.

As immigration patterns have changed, the concern of those already in the United States about immigration has shifted away from older groups to newer ones which account for a large proportion of immigrants. It was so first with tne English against the Scotch Irish; then both against the Germans and the Irish Catholics. At the turn of the century, concern about changes in the composition of the population focused on the arrival of Italians, Greeks, Poles, Slavs, Jews and other immigrants from Eastern and Southern Europe. In more recent years, attention has centered on Asian and Latin American immigrants.

Destination of Immigrants

Although immigrants settle in all fifty states and U.S. territories, they, like the U.S. population, tend to cluster in a few states and metropolitan areas. Currently over 70 percent of all new immigrants move to just six states--California, New York, Florida, New Jersey, Illinois and Texas. Also following the trends of the U.S.-born population, immigrants now also tend to settle in greater numbers in sunbelt states.

Use of Health Services

Several researchers studying the use of health services among recent immigrants have found that they tend to underutilize health care services. This tendency, though, is more likely to pose a health threat to the individual immigrants involved rather than a public health problem. Other research has found that the children of immigrants tend to report fewer health problems than do the children of native-born parents.

Social and Cultural Adjustments

Research indicates that recent immigrants, and especially their children, adjust rapidly to U.S. norms and patterns of behavior. The children of immigrants, with regard to school achievement, overtake the children of natives within a decade. Additionally, immigrants tend to adopt the nuclear household patterns of native-born Americans. Studies also show that the fertility of immigrant groups decreases both with length of exposure to this country and with rising socioeconomic status, as measured by educational achievement.

Demographic and Ecological Impact

At present there is no agreement as to what is the most desirable population for the United States. Whatever population goal one chooses, the future size and composition of the U.S. population is far more sensitive to variations in fertility than to changes in the level of immigration.

There is general consensus in the United States that its environment should be protected consistent with other goals such as economic growth. Some representatives of environmental groups testifying before the Select Commission have argued that any increase in U.S. population (such as immigration) will have a deleterious effect on the nation's resources and its capacity to feed itself and others. Other environmentalists believe that immigration to the United States has a net positive effect on the use of the world's resources, including that of the United States, and, has little, if any, negative impact on U.S. society. The Commission has found no conclusive answers in this debate because there is little systematic theory or empirical research on the relationship of various levels and kinds of immigration to world resource use and abuse.

Economic Impacts

Economic Growth. Economists agree that immigration has been and continues to be a force for economic growth in the United States and, as a consequence, has a beneficial effect on wages and employment possibilities for most U.S. citizens over time. Of course, the improvement of the quality and the size of the labor force as a result of immigration is only marginal since immigration contributes a relatively small proportion of the total labor force. Immigrants tend to benefit the economy in other ways as well. As consumers, they cause an expansion in the demand for goods and services. As self-selected persons of high motivation and ingenuity, they tend to plan, save, invest and contribute disproportionately to entrepreneurial activity.

Labor Force Participation. The labor force participation of the foreign-born population is lower than that of the native born. Research has shown, however, that although recent immigrants experience an initial period of underparticipation in the labor force, they later equal and--for some groups--exceed the overall native-born rates. Despite differences in recent immigrant/ native labor force participation rates, unemployment rates (unemployed as a percentage of the labor force) are similar, with foreign-born females slightly higher and foreign-born males slightly lower than the native born. The proportion of persons entering the labor force as the result of immigration each year is relatively small. However, some immigrants do compete with U.S. workers for jobs, particularly in times of high unemployment.

Occupational Distribution. The 1965 Amendments to the Immigration and Nationality Act contributed to a substantial increase in the proportion of immigrants who were professionals, highly skilled technical workers and manmagers. Further, immigrants on entry are more likely than is the native-born population to be professionals. After entry, though, the occupational distribution of immigrants in professions changes to that of natives. Conversely, immigrants who enter in non- or lower skilled occupations tend to experience considerable upward occupational mobility after entry.

Income. Although studies differ on the amount of time required for the transition, research indicates that while immigrants initially have lower incomes than the native born, they equal and--in some cases--surpass the earnings of the native born with the passage of time. Additionally, the children of immigrants tend to earn more than those of the native born, thereby contributing to the economic well-being of U.S. society as a whole.

Studies also reveal that immigrants with more education, greater fluency in English and more professional experience earn higher incomes than those with less of these skills. Further, immigrants coming specifically for occupational/economic reasons have earned more than those motivated by family reunification.

Use of Cash Assistance Services. Research indicates that immigrant use of cash assistance programs is substantially less than native use and less than their proportion of the population would warrant. A study made for the Select Commission further concludes that immigrants contribute more to the public coffers than they take.

Summary

Based on its research and analysis, the Commission has found the contributions of immigrants to U.S. society to be overwhelmingly positive. It believes that an immigrant admissions policy that facilitates the entry of qualified applicants is in the U.S. national interest. Whether measured by the number of Nobel Prize winners who have come to the United States as immigrants (30 percent of all U.S. Nobel laureates), the introduction of new concepts in music, art and literature or the industries built by immigrant labor, immigration has been of enormous benefit to this country. The following recommendations on the admission of immigrants provide a framework for a new immigration system that will build on the strengths of the current system while reducing or eliminating its weaknesses.

III.A. NUMBERS OF IMMIGRANTS*

In investigating the limits which should be placed on immigration to the United States, the Commission has considered and balanced those goals which call for greater numbers of immigrants to be admitted with those which dictate lower numbers of annual immigrant admissions.

On the one hand, higher levels of immigration would:

- Aid U.S. economic growth as a result of the entry of ambitious, hard-working immigrants and their children (both generations tend to provide a disproportionate number of skilled workers with a propensity for saving and investment);
- Increase the pool of skilled U.S. workers to support the U.S. social security system and strengthen manpower capabilities;
- Enhance U.S. leadership in world affairs by continuing to present the United States to the world as an open society that champions opportunity;
- Reunify the families of U.S. citizens and U.S. resident aliens more expeditiously; and
- Enrich U.S. cultural life.

On the other hand, lower levels of immigration would:

- Reduce competition for jobs in some sections of the country and in some sectors of the economy, at least initially;
- Reduce social tensions as U.S. citizens and resident aliens sometimes perceive newcomers negatively; and
- Reduce the time until the United States will achieve population stability.

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*See Appendix B for Supplemental Statements of Commissioners Holtzman, Kennedy, Muskie, Otero, Rodino and Simpson on this issue.

While the Commission has made a recommendation regarding numbers of immigrants to be admitted annually, it recognizes that what is in the national interest at this time may change and has thus developed a system for admitting immigrants which can operate effectively, regardless of increases or decreases in the overall level set for immigrant admissions.

III.A.1. Numerical Ceilings on Total Immigrant Admissions*

THE SELECT COMMISSION RECOMMENDS CONTINUING A SYSTEM WHERE SOME IMMIGRANTS ARE NUMERICALLY LIMITED BUT CERTAIN OTHERS--SUCH AS IMMEDIATE RELATIVES OF U.S. CITIZENS AND REFUGEES--ARE EXEMPT FROM ANY NUMERICAL CEILINGS.

Proposals have been made to the Commission which maintain that regardless of what number is set, all immigrants and refugees should be admitted under a total, fixed ceiling, with adjustments made within the immigrant categories as a result of any fluctuations in the number of refugee admissions each year. While attracted by the fact that a firm ceiling on total numbers of immigrants would facilitate planning, the Commission, nevertheless, concludes that the present system--under which a varying number of refugees may be admitted subject to Presidential/ Congressional consultation, and the immediate relatives of U.S. citizens and certain special immigrants are admitted outside of any numerical limitation--provides the proper flexibility to meet U.S. needs. Therefore, while favoring numerical limits on most groups of immigrants, the Commission recommends that, to allow for flexibility in refugee, immediate relative and special immigrant admissions, total U.S. immigrant and refugee admissions be subject to no total cap or ceiling.

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*Commission vote

Yes-15; No-1.

III.A.2. Numerically Limited Immigration*

THE SELECT COMMISSION RECOMMENDS AN ANNUAL CEILING OF 350,000 NUMERICALLY LIMITED IMMIGRANT VISAS WITH AN ADDITIONAL 100,000 VISAS AVAILABLE FOR THE FIRST FIVE YEARS TO PROVIDE A HIGHER CEILING TO ALLOW BACKLOGS TO BE CLEARED.

Current immigration law has been criticized on the grounds that the number of persons admitted annually to the United States as immigrants is either too high or much too low to serve U.S. national interests. The Commission has considered both arguments carefully and rejects proposals for substantial increases in numerically limited immigration at this time. The lack of control over illegal immigration, which is likely to continue in the near future, the political instability in the world which may lead to new refugee admissions and the economic unrest in the United States make such a recommendation inadvisable. The Commission also rejects proposals to further restrict the admission of numerically limited immigrants, because even at current levels, U.S. policy impedes family reunification. The Commission holds the opinion that a modest increase in legal immigration is necessary to realize U.S. immigration goals. Some Commissioners, while recognizing the desirability of ultimately increasing the annual number of immigrant visas prefer maintaining the current 270,000 ceiling until effective enforcement measures are in place. They believe that only when undocumented/illegal immigration is brought under control will increasing the number of legal immigrants be in the national interest.

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*Commission vote

Option 1: (12 votes) Provide an annual ceiling of 350,000 numerically limited immigrant visas, with an additional 100,000 visas available for the first five years to provide higher ceilings to allow backlogs to be cleared.

Option 2: (4 votes) Continue the present annual ceiling on immigration (270,000) until effective enforcement is in place and then consider raising the ceiling.

The Commission majority is of the view that an annual increase in numerically limited immigration from 270,000 to 350,000 will provide benefits without straining U.S. ethnic and social relations or harming the U.S. labor market. While recommending an annual level of 350,000, the Commission recognizes that it would be impossible to accommodate current visa applicants who have been waiting years for their visas within this level during the first few years of the new system's operation. Therefore, the Commission further recommends that for the first five years following enactment of a new law, 100,000 additional visas be made available annually to provide a higher worldwide ceiling under which the admission of backlogged applicants can be expedited.

III.B. GOALS AND STRUCTURE*

Current immigration law has been criticized for not clearly stating the goals of U.S. immigration policy and not linking these goals with a consistent system of implementation. A step was made toward this end in the Refugee Act of 1980, which established the admission of refugees as a distinct policy goal and provided criteria and a mechanism for their selection. The goals of the system for admitting immigrants, however, are less clear because immigrants are admitted under a single system of preferences which frustrates the implementation of specific goals and priorities. The Commission supports a system for admitting immigrants which clearly serves the goals of family reunification, economic growth consistent with protection of the U.S. labor market, and cultural diversity, consistent with national unity. Table 7, which follows, shows the Commission's proposed immigrant admissions system designed to serve these goals. The specific groups and the rationale for their inclusion are described in detail in the following sections. Table 8 compares this proposed system with the existing immigrant admissions system.

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*See Appendix B for Supplemental Statements of Commissioners Kennedy and Otero on this issue.

TABLE 7

PROPOSED IMMIGRATION ADMISSIONS SYSTEM

CATEGORY I FAMILY REUNIFICATION		CATEGORY II INDEPENDENT IMMIGRATION		
Immediate Relatives of U.S. Citizens*	Other Close Relatives≠	Special Immigrants*	Immigrants with Special Qualifications*	Other Independent Immigrants≠
• Spouses • Unmarried sons and daughters • Parents of adult U.S. citizens • Grandparents of adult U.S. citizens	Group I* • Spouses, minor unmarried children of permanent resident aliens Group II# • Adult unmarried sons and daughters of permanent resident aliens • Married sons and daughters of U.S. citizens • Brother and sisters of adult U.S. citizens • Parents (over age 60 whose children all live in the United States) of permanent resident aliens	• Persons who lost U.S. citizenship • Ministers of religion • Former employees of U.S government	• Immigrants of exceptional merit • Investors	• Other qualified immigrants

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* No per-country ceilings applied.
≠ Unused visa numbers may be used in the highest category with unmet demand
# Per-country ceilings applied.

TABLE 8

COMPARISON OF PROPOSED AND CURRENT VISA ALLOCATION SYSTEMS

	PROPOSED SYSTEM	CURRENT SYSTEM
Immigrant classifications		
I. Family reunification	• Separate category I for family reunification	• Family reunification preferences combined with occupational preferences
A. Immediate relatives of U.S. citizens	• Spouses	• Spouses
	• Minor unmarried sons and daughters	• Minor unmarried sons and daughters
	• Adult unmarried sons and daughters	• 1st preference
	• Parents of adult U.S. citizens	• Parents of adult U.S. citizens
	• Grandparents of adult U.S. citizens	• No provision
B. Other close relatives	• Spouses, minor unmarried sons and daughters of legal permanent residents	• 2nd preference
	• Adult unmarried sons and daughters of legal permanent residents	• 2nd preference
	• Married sons and daughters of U.S. citizens	• 4th preference
	• Brothers and sisters of adult U.S. citizens	• 5th preference
	• Certain parents (over age 60) of permanent resident aliens	• No provision
II. Independent immigration	• Separate category II for independent immigrants	• Occupational preferences combined with family reunification preferences
A. Special qualifications	• Immigrants of exceptional merit	• Qualified under 3rd preference
	• Investors	• Qualified under nonpreference, when available
B. Other independent immigrants	• Other independent immigrants	• 3rd, 6th and nonpreference
III. Refugees	• Refugee Act of 1980	• Refugee Act of 1980
Annual Worldwide ceiling on Immigration	• 350,000 (plus 100,000 additional numbers per year for first 5 years)	• 270,000
Per-country ceilings	• Separate per-country ceilings for family reunification and independent categories	• Standard 20,000 per-country ceiling
	• No per-country ceilings for spouses and minor unmarried sons and daughters of legal permanent residents	• Standard 600 ceiling for dependencies
	• No distinction between independent nations and dependencies	

III.B.1. Categories of Immigrants*

THE SELECT COMMISSION RECOMMENDS THE SEPARATION OF THE TWO MAJOR TYPES OF IMMIGRANTS--FAMILIES AND INDEPENDENT (NONFAMILY) IMMIGRANTS--INTO DISTINCT ADMISSIONS CATEGORIES.

Immigrants, whether for the purposes of family reunification or other purposes, are now admitted to the United States within the same preference system. This mixing of family and independent worker (nonfamily) groups, combined with other provisions of the law, has resulted in widespread inequities and confusion concerning the two main goals of immigration--family reunification and bringing in persons with needed skills. The Commission holds the view that these two goals should be realized through separate immigration channels to reduce competition between them, and to enable U.S. immigration policy to serve and support the goals of family reunification and independent immigration in a more flexible and equitable manner than is possible under the current single-channel system.

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*Commission vote

Yes-16.

III.C. FAMILY REUNIFICATION*

THE SELECT COMMISSION RECOMMENDS THAT THE REUNIFICATION OF FAMILIES SHOULD CONTINUE TO PLAY A MAJOR AND IMPORTANT ROLE IN U.S. IMMIGRATION POLICY.

The important goal of family reunification has been upheld by the United States in areas other than immigration policy. Through its agreement to the Helsinki Accords, the United States has further confirmed the priority of family reunification, especially the expeditious reunion of spouses and children with their U.S. citizen relatives. The reunification of families serves the national interest not only through the humaneness of the policy itself, but also through the promotion of the public order and well-being of the nation. Psychologically and socially, the reunion of family members with their close relatives promotes the health and welfare of the United States.

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*Commission vote

Recommendation flows from the combined votes for Recommendations III.C.1. to III.C.5.

See Appendix B for Supplemental Statements of Commissioners Hesburgh, Kennedy, McClory, Muskie, Ochi, Rodino and Simpson on this issue.

III.C.1. Immediate Relatives of U.S. Citizens*

THE SELECT COMMISSION RECOMMENDS CONTINUING THE ADMISSION OF IMMEDIATE RELATIVES OF U.S. CITIZENS OUTSIDE OF ANY NUMERICAL LIMITATIONS. THIS GROUP SHOULD BE EXPANDED SLIGHTLY TO INCLUDE NOT ONLY THE SPOUSES, MINOR CHILDREN AND PARENTS OF ADULT CITIZENS, BUT ALSO THE ADULT UNMARRIED SONS AND DAUGHTERS AND GRANDPARENTS OF ADULT U.S. CITIZENS. IN THE CASE OF GRANDPARENTS, PETITIONING RIGHTS FOR THE IMMIGRATION OF RELATIVES SHOULD NOT ATTACH UNTIL THE PETITIONER ACQUIRES U.S.CITIZENSHIP.

In keeping with tradition and humanitarian concerns, the Commission strongly supports the admission of the immediate family members of U.S. citizens without numerical restrictions.

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* Commission vote

This recommendation encompasses five individual votes:

Spouses of U.S. citizens should remain exempt from the numerical limitations placed on immigration to the United States. Yes-16.

Numerically exempt all unmarried children of U.S. citizens, minor and adult. Yes-14; No-2.

Continue the present practice which allows the numerically unlimited entry of parents of adult U.S. citizens. Yes-16.

The parents of minor U.S. citizen children should be admitted. Yes-3; No-13.

Include grandparents of adult U.S. citizens in the numerically exempt category but without the right to petition for any other relatives until they acquire U.S. citizenship. Yes-13; No-3.

Spouses and minor children have long been admitted to the United States without regard to numbers. The Commission recommends the retention of this policy. Further, because it believes that there should not be an artificial distinction based on the age of unmarried sons and daughters of U.S. citizens, it recommends moving the current first preference--the adult unmarried sons and daughters of U.S. citizens--to the numerically unlimited family reunification subcategory. The expansion of this numerically exempt subcategory to include all unmarried sons and daughters of U.S. citizens will not result in significant increases in immigration. All first preference visa demand is now met within that preference, with admissions totaling only three to five thousand annually under the current system.

Parents of adult U.S. citizens have also been admitted as numerically exempt immigrants since 1965, and the Commission strongly supports the retention of this status. It does not, however, recommend the creation of an immigration status for the parents of minor U.S. citizens. Prior to 1977, this relationship exempted Western Hemisphere natives from the labor certification requirement, but otherwise conferred no special benefits. The majority of the Commission is of the view that petitioning for relatives is a decision to be reserved for adults and, further, that inclusion of parents of minor U.S. citizens is likely to encourage circumvention of the law for the purpose of gaining future immigration benefits. Some Commissioners, however, believe that this limitation discriminates against and causes extreme hardship for some minor U.S. citizens who must choose between living with their parents outside the United States or growing up without their parents in the United States.

To further reunify immediate families, the Commission advocates extending the numerically exempt subcategory to include the grandparents of adult U.S. citizens. Grandparents in many cultures are among the closest of relatives who, as a result of family movements, may be left alone in their homelands during their later years. Although firm data do not exist, most Commissioners anticipate that the number of would-be applicants in this category is likely to be small and have minimal impact on the economy of the United States. On the other hand, some Commissioners oppose the inclusion of grandparents because they doubt that the number of entrants in this group is likely to be small, especially since they are numerically exempt. Recognizing this concern and wishing to limit growth in the visa demand which might result from entrants in this group, the Commission majority, although favoring the entry of grandparents, believes that they should not be able to petition for other relatives until they obtain U.S. citizenship.

III.C.2. Spouses and Unmarried Sons and Daughters of Permanent Resident Aliens*

THE SELECT COMMISSION RECOGNIZES THE IMPORTANCE OF REUNIFYING SPOUSES AND UNMARRIED SONS AND DAUGHTERS WITH THEIR PERMANENT RESIDENT ALIEN RELATIVES. A SUBSTANTIAL NUMBER OF VISAS SHOULD BE SET ASIDE FOR THIS GROUP AND IT SHOULD BE GIVEN TOP PRIORITY IN THE NUMERICALLY LIMITED FAMILY REUNIFICATION CATEGORY.

Although the Commission supports the reunification of immediate relatives regardless of the citizenship status of the U.S. petitioner, the Commission does not believe the spouses and unmarried sons and daughters of permanent resident aliens should be placed within the numerically exempt category. Although a few Commissioners believe that the spouses and sons and daughters of permanent resident aliens should have the same numerically exempt immigration status as those of U.S. citizens, a strong

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*Commission vote

Option 1: (9 votes)	Continue the present practice which limits the number of spouses and unmarried sons and daughters admitted annually to the United States.
Option 1A: (3 votes)	Continue to admit the spouses of permanent resident aliens within the numerical limitations, but limit the immigration of sons and daughters to only those who are minors and unmarried.
Option 2: (4 votes)	Exempt the spouses and unmarried sons and daughters of permanent residents from numerical limitation.

majority of the Commissioners hold the view that numerically exempting this group would increase substantially the number of immigrant admissions each year, especially in the years immediately following a legalization program. Some Commissioners, in fact, advocate limiting the entry of relatives of permanent resident aliens further by eliminating the adult unmarried sons and daughters from the preference. However, the majority of the Commission recommends the continuation of the present policy which numerically limits the entry of the spouses and unmarried sons and daughters of permanent residents. Recognizing the importance of this group, the Commission recommends a substantial allocation of visa numbers under this numerically limited preference and that the preference be given top priority within the family reunification category.*

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*Some Commissioners have suggested that if 250,000 out of 350,000 total numerically limited visas were made available for family reunification, up to 175,000 (70 percent) of these should be allocated to the spouses and minor unmarried sons and daughters of permanent resident aliens.

III.C.3. Married Sons and Daughters of U.S. Citizens*

THE SELECT COMMISSION RECOMMENDS CONTINUING A NUMERICALLY LIMITED PREFERENCE FOR THE MARRIED SONS AND DAUGHTERS OF U.S. CITIZENS.

Married sons and daughters have traditionally been admitted within the numerically limited preferences of the immigrant admissions system. Although the marital status of a child does not affect the degree of relationship to a parent, the Commission does not believe that the married sons and daughters of U.S. citizens should share the same numerically exempt status as unmarried sons and daughters. The demand to immigrate in the current married-son-and-daughter preference is far greater than in the unmarried group and thus would have a far greater impact on total numbers of immigrants admitted if it were in the exempt category. Further, although possibly as close to their parents as unmarried sons and daughters, married children are not isolated from a close family relationship, as unmarried children may be when they cannot join their U.S. citizen parents expeditiously.

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*Commission vote

Yes-15; No-1.

III.C.4. Brothers and Sisters of U.S. Citizens*

THE SELECT COMMISSION RECOMMENDS THAT THE PRESENT POLICY ADMITTING ALL BROTHERS AND SISTERS OF ADULT U.S. CITIZENS WITHIN THE NUMERICAL LIMITATIONS BE CONTINUED.

The Commission endorses the policy of continuing to include a preference for brothers and sisters of adult U.S. citizens, one of the most difficult issues faced by the Commission, but is divided on whether both married and unmarried siblings should be included within the numerical limitations. Although a majority of Commissioners has chosen to continue this policy for all siblings of adult U.S. citizens, regardless of marital status, a large minority favored extending a preference in the family reunification category only to the unmarried brothers and sisters of adult U.S. citizens.

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* Commission vote

Option 1: (9 votes) Maintain the present practice which numerically limits the immigration of brothers and sisters of adult U.S. citizens.

Option 2: Eliminate provision for the immigration of brothers and sisters of adult U.S. citizens from the new immigration system.

Option 3: (7 votes) Provide for the numerically limited immigration of unmarried brothers and sisters of adult U.S. citizens.

The majority of the Commission members, in recommending the inclusion of all brothers and sisters of adult U.S. citizens, concludes that continuing this tradition promotes the national interest as it recognizes the closeness of the sibling relationship and the broader concept of family held by many nationalities. Those Commissioners who favor the inclusion of only unmarried siblings have made their choice on the basis of the large, unmet demand in higher family reunification preferences where the need for reunification is greater, the large and rapidly growing demand within the current fifth preference, and the fact that the immigration chain created by the spouses of married siblings (who naturalize and then petition for their parents and their own married siblings) results in exponential growth in visa demand.

III.C.5. Parents of Adult Permanent Residents[*]

THE SELECT COMMISSION RECOMMENDS INCLUDING A NUMERICALLY LIMITED PREFERENCE FOR CERTAIN PARENTS OF ADULT PERMANENT RESIDENT ALIENS. SUCH PARENTS MUST BE ELDERLY[†] AND HAVE NO CHILDREN LIVING OUTSIDE THE UNITED STATES.

Prior to the 1976 Amendments to the Immigration and Nationality Act, Western Hemisphere-born parents of permanent resident aliens were exempted from the general labor certification requirement. Parents of permanent resident aliens have otherwise not previously been given any preferred status in U.S. immigration policy. Since there are currently four to five million permanent residents in the United States and a proposed legalization program would increase this number--perhaps significantly--the Commission holds the view that it is unwise to create a broad, new preference where demand is likely to far exceed this country's ability to respond.

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[*] Commission vote

Option 1: (3 votes) Continue the present system which does not provide for the entry of parents of legal permanent residents.

Option 2: (2 votes) Provide for the numerically limited entry of parents of legal permanent risidents.

Option 3: (11 votes) Provide for the numerically limited entry of parents of legal permanent residents when those parents have an only child in the United States and are elderly.

[†] Several ages ranging from 60 to 70 were used in discussion by the Commissioners.

Some Commissioners believe that it is undesirable to provide for the entry of any parents of permanent resident aliens because of the huge demand likely to be created by such an action. The majority of Commissioners, however, recognizes that there are often cases in which the need to reunify parents with their permanent resident children is compelling. The Commission, therefore, favors creating a limited preference for these individuals and would allow their entry if they could meet two criteria in addition to those which already exist--being at least a specified elderly age and having no children living outside the United States. It believes that by imposing these criteria, the United States will be able to meet the entry needs of the most compelling cases for reunification.

Although this provision would not allow the majority of permanent resident aliens to bring their parents, the Commission notes that once these resident aliens obtain U.S. citizenship, they would be able to bring their parents outside of the numerical limitations on immigration. It, therefore, does not believe that it is desirable or necessary to include a preference for all parents of legal permanent residents.

III.C.6. Country Ceilings*

THE SELECT COMMISSION RECOMMENDS THAT COUNTRY CEILINGS APPLY TO ALL NUMERICALLY LIMITED FAMILY REUNIFICATION PREFERENCES EXCEPT TO THAT FOR THE SPOUSES AND MINOR CHILDREN OF PERMANENT RESIDENT ALIENS, WHO SHOULD BE ADMITTED ON A FIRST-COME, FIRST-SERVED BASIS WITHIN A WORLDWIDE CEILING SET FOR THAT PREFERENCE.

National origins quotas and, more recently, per-country ceilings have traditionally applied to numerically limited immigration. Per-country ceilings, which currently apply equally to all independent nations and, on a far smaller scale, equally to all colonies and dependent countries, permit the immigration of persons from many different countries. However, they have kept

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*Commission vote

Option 1: (2 votes)	Maintain the present practice with country ceilings applied to family reunification preferences.
Option 2: (3 votes)	Eliminate country ceilings for family reunification preferences.
Option 3: (2 votes)	Raise country ceilings to partially accommodate all sending countries.
Option 4: (8 votes)	Continue country ceilings for all family reunification prferences except that for the spouses and minor children of permanent resident aliens.
Pass (1 vote)	

the spouses and children of permanent residents from certain countries separated from their U.S. relatives for many years,* frustrating the goal of family reunification, and in some cases encouraging illegal migration. Some Commissioners, therefore, advocate the elimination of per-country ceilings in the family reunification category. The majority, recognizing the importance and priority which should be accorded the reunification of immediate family members of permanent resident aliens over other preferences--regardless of their nationality--recommends that no country ceilings be applied to the immigration of spouses and minor children of permanent resident aliens but that per-country ceilings apply to other family reunification preferences. Further, the Commission holds the view that there should be no distinction in the size of the ceiling set on colonies and dependent countries and independent nations.

This policy will facilitate the reunification of the closest family members without regard to nationality but still retain the advantages of per-country ceilings in the other family reunification preferences. In the case of these lower preferences, the Commission believes that country ceilings should be set at a fixed percentage of the total number of visas allocated to these preferences. This use of a fixed percentage will facilitate flexibility. If the number of visas made available for family reunification increases or decreases by statute, per-country ceilings will adjust accordingly.

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* For instance, natives of Hong Kong and Mexico must currently wait for over six years for second preference visas enabling them to join a permanent resident spouse or parent in the United States

III.C.7. Preference Percentage Allocations*

THE SELECT COMMISSION RECOMMENDS THAT PERCENTAGES OF THE TOTAL NUMBER OF VISAS SET ASIDE FOR FAMILY REUNIFICATION BE ASSIGNED TO THE INDIVIDUAL PREFERENCES.

Without assigning precise numbers, the Commission advocates allocating specific percentages to each of the family reunification preferences.* It further supports a provision that would make unused visas from any preference available to the highest preference with unmet demand. Given the several family reunification preferences recommended by the Commission, a system without assigned percentages would almost certainly mean that visa numbers would never or rarely be available in the lower preferences. Such a system would result in huge backlogs in these lower preferences with no hope of relief.

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*Commission vote

Option 1: (1 vote) Maintain the present practice which assigns percentages to numerically limited family reunification preferences.

Option 1A: (12 votes) Maintain the present practice which assigns percentages to numerically limited family reunification preferences and to immigrants with special qualifications in the independent category.

Option 2: (3 votes) Eliminate percentages for the numerically limited family reunification preferences and meet visa demand in higher preferences before issuing visas in lower preferences.

Some Commissioners hold that backlogs in lower preferences are more tolerable than those in the higher preferences and that all demand in higher preferences should be met before visa numbers are allocated elsewhere. However, the majority of Commissioners recommend that percentages be assigned--taking into account the closeness of the relationship, demand and relative priority--within the numerically limited family reunification subcategory.

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*Because the spouses and minor children of permanent resident aliens have been exempted from country ceilings, it is necessary to place a separate numerical limit on that group and assign percentages to the remaining lower preferences based on a separate numerical ceiling.

III.D. INDEPENDENT IMMIGRATION*

THE SELECT COMMISSION RECOMMENDS THAT PROVISION BE MADE IN THE IMMIGRANT ADMISSIONS SYSTEM TO FACILITATE THE IMMIGRATION OF PERSONS WITHOUT FAMILY TIES IN THE UNITED STATES.

Provision has traditionally been made in the law for the immigration of at least some persons without close family members in the United States. The number of visas made available to nonfamily members in the immigration system has dwindled over time, however. Currently no more than 20 percent of the 270,000 visas assigned to the numerically limited third and sixth preferences is available to qualified nonfamily immigrants and their spouses and children.

Additional provisions have resulted in even lower numbers of nonfamily immigrants being able to qualify to come to the United States in recent years. To qualify for third or sixth preference (nonfamily) status, immigrants must generally be highly skilled, have a U.S. job offer and their prospective employer must obtain labor certification from the Secretary of Labor showing that

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*Commission vote

Recommendation flows from the combined votes for Recommendations III.D.2., III.D.3. and III.D.5.

See Appendix B for Supplemental Statements of Commissioners Hesburgh, Marshall, McClory, Ochi, Otero and Simpson on this issue.

U.S. workers are not available and that the employment of such aliens will not adversely affect the wages and working conditions of similarly employed workers in the United States. Nonpreference applicants generally have had to meet these same requirements, but since all visa numbers have been and are expected to continue to be used within the preferences, this additional avenue for nonfamily immigrants essentially has been closed since late 1978.

Most Commissioners believe that the entry of nonfamily or independent immigrants, and the goals of economic growth consistent with labor market protection and cultural diversity consistent with national unity, can best be served by creating a separate category with its own visa allocation and selection criteria.

III.D.1. Special Immigrants*

THE SELECT COMMISSION RECOMMENDS THAT "SPECIAL" IMMIGRANTS REMAIN A NUMERICALLY EXEMPT GROUP BUT BE PLACED WITHIN THE INDEPENDENT CATEGORY.

Some numerically small groups of immigrants--certain former employees of the U.S. government abroad, certain persons who lost their U.S. citizenship and ministers of religion whose services are needed by their denominations in the United States--have historically been exempted from any numerical ceilings. About 2,000 immigrants enter in these groups each year.* Because of the special nature of the immigrant groups included within this category and the small numbers of admissions, the Commission supports the continuation of a numerically exempt status for special immigrants and the placement of this subcategory within the independent category.

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*Commission vote

Yes-16.

III.D.2. Immigrants With Exceptional Qualifications+

THE SELECT COMMISSION RECOGNIZES THE DESIRABILITY OF FACILITATING THE ENTRY OF IMMIGRANTS WITH EXCEPTIONAL QUALIFICATIONS AND RECOMMENDS THAT A SMALL, NUMERICALLY LIMITED CATEGORY BE CREATED WITHIN THE INDEPENDENT CATEGORY FOR THIS PURPOSE.

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*An additional number of permanent resident aliens (immigrants) returning from temporary visits abroad are also defined as "special immigrants" to prevent enumerating them as new immigrants on each reentry, but this group does not add to the number of new entries.

+Commission vote

Option 1: (3 votes)	Do not create a separate category for immigrants with exceptional qualifications but allow them to enter as they qualify under the provisions of the independent category.
Option 2: (13 votes)	Create a small, numerically limited subcategory in the independent category for immigrants with exceptional qualifications.

The United States has traditionally accommodated immigrants of exceptional merit and ability in their professions. Although some Commissioners would not create a separate category for such persons of exceptional merit, the Commission majority favors continuing and giving prominence to this tradition by reserving a numerically small category for persons of exceptional artistic, professional or scientific merit. In creating this category, however, the Commission holds the view that it is important to clarify that the term "exceptional" connotes that qualified immigrants in this group are renowned in their fields and would contribute significantly to the national interest if they immigrate to the United States.

The Commission's intent is not to provide a separate category for highly trained or needed professionals (for example, nurses, doctors, engineers), artists or other persons of merit unless they are exceptional and qualify under specific established guidelines. Although professionals of merit will be admissible under the new immigration system, they will have to meet the criteria established for admission in the "other independent immigrant" category. (See Recommendation III.D.5.) In recommending that a small number of visas be set aside to facilitate the immigration of qualified exceptional persons, the Commission further cautions against the creation of a significant channel which could deprive other nations of the highly skilled persons they need.

III.D.3. Immigrant Investors*

THE SELECT COMMISSION RECOMMENDS CREATING A SMALL, NUMERICALLY LIMITED SUBCATEGORY WITHIN THE INDEPENDENT CATEGORY TO PROVIDE FOR THE IMMIGRATION OF CERTAIN INVESTORS. THE CRITERIA FOR THE ENTRY OF INVESTORS SHOULD BE A SUBSTANTIAL AMOUNT OF INVESTMENT OR CAPACITY FOR INVESTMENT IN DOLLAR TERMS SUBSTANTIALLY GREATER THAN THE PRESENT $40,000 REQUIREMENT SET BY REGULATION.

Until late 1978, qualified investors were able to immigrate in the numerically limited nonpreference category. Persons wishing to immigrate as investors had to demonstrate that they sought to enter the United States to engage in enterprises in which they were investing or had invested at least $40,000, that they would be a principal manager of that enterprise and that they would employ one or more U.S. citizens or permanent resident aliens other than their own spouses and children. The number of investors who could immigrate under the nonpreference category was not limited within that category.

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*Commission vote

Option 1: (1 vote) Make no special provision for investors.

Option 2: Make provision for investors by including them on the Department of Labor Schedule A (if it is retained) or, if not, by other regulation so investors can enter in the independent category.

Option 3: (15 votes) Create a small numerically limited subcategory for investors in the independent category but increase the amount of the investment to an amount significantly greater than the present $40,000.

The Commission concludes that admitting investors to the United States is in the national interest and, therefore, recommends that investors be included as a small numerically limited group within the independent category of the new immigration system. However, the Commission further believes that to provide flexibility, the amount of the investment required to qualify for this status should be significantly greater than the current $40,000 regulatory limit. Some experts have indicated that $250,000 is a lower bound for the capital required to begin a successful new business. The Commission is also of the view that additional consideration should be given to increasing the number of U.S. workers to be employed by investor immigrants.

III.D.4. Retirees*

THE SELECT COMMISSION RECOMMENDS THAT NO SPECIAL PROVISION BE MADE FOR THE IMMIGRATION OF RETIREES.

Retirees who are able to demonstrate that they are and will continue to be self-supporting without U.S. employment following their immigration, are, like immigrant investors, able to qualify as nonpreference immigrants under the current law. However, since nonpreference numbers are no longer available, an avenue for the immigration of retirees is no longer open. Several Commission members advocate providing an immigration category for such persons in a new immigration law. Some of these Commissioners want to create a numerically small subcategory for retirees within the independent category. Others believe that a separate category is unnecessary and that

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*Commission vote

Option 1: (10 votes)	Make no special provision for the immigration of retirees.
Option 2: (3 votes)	Do not create a special category for retirees but make provision by regulation for their entry as independent immigrants if they can prove they have continuing income to be self-supporting.
Option 3: (3 votes)	Create a numerically small subcategory of visas specifically for retirees in the independent category.

qualified retirees should be able to enter by regulation within the "other independents" immigrant category. The majority of Commissioners, however, choose to make no special provision for the immigration of retirees. They believe that retirees are not beneficial to the United States and that allocating visa numbers to this group would reduce the number of visas available to immigrants whose entry would be more in the U.S. interest. Some Commissioners further believe that retirees could potentially strain our social security system.

III.D.5. Other Independent Immigrants*

THE SELECT COMMISSION RECOMMENDS THE CREATION OF A CATEGORY FOR QUALIFIED INDEPENDENT IMMIGRANTS OTHER THAN THOSE OF EXCEPTIONAL MERIT OR THOSE WHO CAN QUALIFY AS INVESTORS.

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*Commission vote

Option 1: (2 votes) Provide no means for entry of independent immigrants beyond special immigrants and immigrants with special qualifications.

Option 2: (13 votes) Provide a subcategory within the independent category for other qualified immigrants.

Pass (1 vote)

In considering U.S. immigration policy, the Select Commission has recognized that a mechanism is needed to admit immigrants who cannot qualify for entry under the family reunification category. Although immigrants in this independent category will still have to qualify for entry under the appropriate criteria, as do all other immigrants, this category will allow the entry of persons without family ties in the United States and of persons whose family ties are distant. Persons who cannot now qualify because they come from countries without an immigration base in the United States such as many African nations, or from countries from which immigration was historic rather than recent, as in the case of many European nations, will have an immigration channel opened to them.

By creating an independent category, the Commission holds the view that the opportunity to immigrate will be broadened, thus increasing the diversity among immigrants, and that more immigrants will be selected on the basis of criteria which meet the objectives of U.S. national interest, beyond those of family reunification. One possible benefit will be the increased proportion of immigrants screened for labor market impact which will both protect U.S. workers and enhance economic growth.

III.D.6. Selection Criteria for Independent Immigrants.*

THE SELECT COMMISSION BELIEVES THAT SPECIFIC LABOR-MARKET CRITERIA SHOULD BE ESTABLISHED FOR THE SELECTION OF INDEPENDENT IMMIGRANTS, BUT IS DIVIDED OVER WHETHER THE MECHANISM SHOULD BE A STREAMLINING AND CLARIFICATION OF THE PRESENT LABOR CERTIFICATION PROCEDURE PLUS A JOB OFFER FROM A U.S. EMPLOYER, OR A POLICY UNDER WHICH INDEPENDENT IMMIGRANTS WOULD BE ADMISSIBLE UNLESS THE SECRETARY OF LABOR RULED THAT THEIR IMMIGRATION WOULD BE HARMFUL TO THE U.S. LABOR MARKET.

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* Commission vote

Option 1: (7 votes)	Revise the present labor certification procedure and require prospective immigrants to have U.S. job offers.
Option 2:	Revise the labor certification procedure to make prospective independent immigrants admissible unless the Secretary of Labor has certified there are sufficient workers and require prospective immigrants to have U.S. job offers.
Option 2A: (7 votes)	Revise the labor certification procedure to make prospective independent immigrants admissible unless the Secretary of Labor has certified there are sufficient workers but do not require a U.S. job offer.
Option 3: (2 votes)	Point system based on multiple criteria

With regard to selection criteria for independent immigrants, the Commission recommends continuing the use of labor-related criteria which, in addition to their usefulness as a selection mechanism, will protect the U.S. labor market and provide workers unavailable in this country. There are, however, differing views within the Commission on the type of labor-related criteria which should be recommended. On the one hand, several Commissioners favor a return to a less restrictive policy and would provide only for minimum selection criteria. Other Commissioners favor streamlining the current labor certification procedures but would continue current policy which admits immigrants for purposes of employment only if they enter to fill jobs for which U.S. workers are unavailable and at wages and working conditions that will not adversely affect similarly employed workers in the United States.

Those Commissioners calling for minimum criteria recommend returning to the pre-1965 labor certification procedure under which independent immigrants would be admissible unless the Secretary of Labor certified that there were sufficient workers in a particular place and occupation. Such a system, they believe would reduce the barriers which individual labor certification places in the way of prospective immigrants, but still bar the entry of workers who would be most detrimental to the U.S. labor force and eliminate the inefficiencies of the current individual labor certification process. Further, they argue that, by not requiring a U.S. job offer of applicants, such a selection system would be more fair. It would open the independent category to a wider range of applicants particularly to those without family or friends in the United States to help arrange employment. Some Commissioners believe that the current requirement of a job offer frequently promotes fraud by inducing prospective immigrants to use nonimmigrant status to enter the United States, find work and then adjust to immigrant status.

Other Commissioners believe that the less restrictive system would not be sufficiently protective of the U.S. labor market and would create a visa demand which could not realistically be met within the number of visas likely to be available for independent immigrants. They argue that the deficiencies of the present labor certification system, which has been universally criticized as costly, cumbersome, ineffective and highly acrimonious, can be corrected by streamlining and clarifying the process. They recommend that such words and phrases as "willing," "at the place" and "available at the time of application for a visa and admission to the United States" be deleted from the wording of the exclusionary ground; that the Department of Labor expand and strengthen its lists of occupations for which there are sufficient and insufficient workers available based on statistical evidence and that applicants be required, as under current law, to have valid job offers from U.S. employers. This streamlined system, its advocates believe, would increase the efficiency of the present labor certification system by reducing the incidence of individual certification and the acrimony of its procedures, protect the U.S. labor market, reduce fraud and ensure that prospective independent immigrants do not become public charges once in the United States.

III.D.7. Country Ceilings*

THE SELECT COMMISSION RECOMMENDS A FIXED-PERCENTAGE LIMIT TO THE INDEPENDENT IMMIGRATION FROM ANY ONE COUNTRY.†

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*Commission vote

Option 1: (4 votes)	Do not impose per-country ceilings on independent immigration.
Option 2: (1 vote)	Do not impose per-country ceilings on independent immigration but bar independent immigration to nationals of any country where immigration in the family reunification category exceeded 50,000 in the preceding year, or, if administratively feasible, in the same year.
Option 2A: (3 votes)	Continue an annual per-country ceiling of 20,000 and reduce the number of visas available in the independent category to natives of a country by the number used by that country in the numerically limited family reunification category.
Option 3:	Establish a fixed, uniform numerical ceiling on independent immigration from any one country.
Option 4: (8 votes)	Establish a fixed percentage as a limit on independent immigration from any one country

†The recommended per-country ceilings are not intended to apply to immigrants of exceptional merit or investors. By virtue of their unusual qualifications, the immigration of such persons should not be restricted by nationality.

Some Commissioners believe that U.S. immigration policy would be most equitable if there were no limitation on the number of immigrants who could come from any one country. However, since the demand to immigrate has traditionally been and remains the greatest in a handful of countries, the Commission majority holds that the goals of the independent category can best be met by imposing a ceiling on the number of independent immigrant visas that can be issued annually to natives of any one nation, colony or dependency.* These Commissioners recommend that the per-country ceiling be a fixed percentage of the total number of visas allocated to the "other independent immigrant" subcategory. The use of a percentage, they hold, facilitates flexibility not available from the current per-country limit of 20,000 visas. If the number of visas available to independent immigrants increases or decreases in accord with the national interest, statutory change in the per-country ceiling will not be required. Some Commissioners, however, favor retaining the present 20,000 per-country limit and applying it to immigration in both the family reunification and independent immigrant categories. Under such a system, family reunification immigrants could enter from any country up to the 20,000 limit; any remaining numbers could be used by independent immigrants of that nationality.

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* Applying fixed percentages to immigration from colonies and dependent nations removes the last vestiges of national origins quotas embodied in the current 600-person annual limit imposed on these entities.

III.E. FLEXIBILITY IN IMMIGRATION POLICY*

Currently the number and groups of immigrants (except refugees) admitted to the United States can be changed only by statute, an infrequent process. This infrequent review of immigration categories and levels, in turn, results in a lack of flexibility in immigration policy. The Commission has considered but votes against the creation of a special mechanism to provide flexibility.† This entity would have been a small council with the ongoing responsibilities of studying domestic and international circumstances, and of making periodic recommendations for the adjustment of immigration levels and the revision of immigration policy. Many Commission members, however, believe that other less costly means are available to provide flexibility and that giving the responsibility for ongoing review of and recommendations on immigration policy to an existing entity is preferable to creating a new one, even though it would be small. Those in the minority argued that without the proposed advisory council, immigration research would continue to be uncoordinated and tend to reflect the specific interests of its sponsors. More important, however, it would not be possible to get an objective periodic recommendation to adjust numbers up or down based on reliable research, thus defeating the goal of flexibility.

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*See Appendix B for Supplemental Statements of Commissioners Hesburgh and Rodino on this issue.

†Commission vote

Create an Immigration Advisory Council to assess domestic and international conditions and recommend changes in immigration levels. Yes-6; No-9; Pass-1.

III.E.1. Review Mechanism for Flexibility*

THE SELECT COMMISSION RECOMMENDS THAT RANKING MEMBERS OF THE HOUSE AND SENATE SUBCOMMITTEES WITH IMMIGRATION RESPONSIBILITIES, IN CONSULTATION WITH THE DEPARTMENTS OF STATE, JUSTICE AND LABOR, PREPARE AN ANNUAL REPORT ON THE CURRENT DOMESTIC AND INTERNATIONAL SITUATIONS AS THEY RELATE TO U.S. IMMIGRATION POLICY.

The Commission believes that representatives of the Senate Subcommittee on Immigration and Refugee Policy and the House Subcommittee on Immigration, Refugees and International Law, in consultation with the Departments of State, Justice and Labor, including the Bureau of Consular Affairs (State) and the Immigration and Naturalization Service (Justice), are well-equipped to prepare the proposed annual report. Such reports would assess U.S. immigration policy and its success in serving domestic and international concerns. The Commission concludes that this process will provide sufficient basis for on-going review of U.S. immigration policy.

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*Commission vote

Yes-16.

SECTION IV. PHASING IN NEW PROGRAMS RECOMMENDED BY THE SELECT COMMISSION*

THE SELECT COMMISSION RECOMMENDS A COORDINATED PHASING-IN OF THE MAJOR PROGRAMS IT HAS PROPOSED.

The Select Commission's recommendations call for several major initiatives--better border and interior law enforcement, legalization of qualified undocumented/illegal aliens and a new immigrant admissions system. These programs are interrelated parts of a new and better immigration policy. They are designed to clean up existing problems--a sizeable undocumented/illegal alien population and large backlogs of immigrant visa applications--and to reduce the significant recurrence of those problems through improved immigration law enforcement and a new system for selecting immigrants. For these new programs to work efficiently, however, certain steps must be taken in conjunction with their implementation.

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*Commission Vote

Yes-12; No-1; Pass-3.

See Appendix B for Supplemental Statements of Commissioners Holtzman, Marshall, Ochi and Simpson on this issue.

TABLE 9

THE COUNTRIES WITH THE GREATEST NUMBER OF ACTIVE IMMIGRANT VISA APPLICANTS, JANUARY 1, 1980
(By Preference)

	1ST	2ND	3RD	4TH	5TH	6TH	NONPREFERENCE	TOTAL
Mexico	2,412	59,207	19	11,059	26,904	1,556	173,681	274,838
Philippines	912	32,914	32,266	14,830	165,776	3,138	1,111	250,947
China	431	10,538	633	9,692	81,093	3,469	5,681	111,537
Korea	19	4,008	198	144	67,953	1,174	835	74,331
Dominican Republic	217	16,491	.....	186	4,677	67	13,419	35,057
India	7	2,480	4,798	69	21,109	684	2,553	31,700
Vietnam	32	6,232	11	74	13,980	63	245	20,637
Colombia	38	3,856	9	149	4,895	343	9,834	19,124
Cuba	427	1,904	.....	2,243	11,751	1	838	17,164
Jamaica	249	5,594	6	577	3,892	346	6,436	17,100
Italy	63	917	30	970	11,044	330	522	13,876
Canada	252	532	496	741	3,151	876	6,097	12,145
Other countries	1,266	31,414	2,484	4,884	91,531	18,562	59,457	209,598
TOTAL	6,325	176,087	40,950	45,618	507,756	30,609	280,709	1,088,054
TOTAL APPLICATIONS, BY PREFERENCE, AS OF JANUARY 1, 1979, WERE:								
	5,909	145,881	51,397	33,487	285,783	28,217	363,691	914,365

SOURCE: Department of State, Visa Office, unpublished data.

A new immigration system and a slightly higher annual ceiling on the number of visas available for immigrants will not, in themselves alleviate all of the problems of the present system. Although all of the registered immigrant visa applicants overseas shown in Table 9 cannot be considered to be backlogged, there are currently well over half a million persons waiting overseas for whom immigrant visas are not immediately available. Additionally, under a legalization program undocumented/illegal aliens who are qualified to become permanent residents will be eligible to petition to bring their spouses and unmarried sons and daughters under the immigrant admissions system. Both of these groups--existing backlogged applicants and legalized aliens' immediate relatives--must be considered in planning for the implementation of programs recommended by the Select Commission. Therefore, in developing a broad plan for implementing its recommendations efficiently and effectively, the Select Commission has chosen to clear existing immigrant visa backlogs as a part of phasing in its new immigrant admissions system. It has also found it desirable to consider the timing and impact of its new immigrant admissions initiatives in light of its recommendations calling for the legalization of undocumented/illegal aliens and the ultimate immigration of the immediate relatives of newly legalized residents.

The Select Commission is recommending that new enforcement initiatives be instituted before a legalization program is undertaken. This timing will help ensure that new flows of undocumented/illegal aliens do not result as the existing undocumented/ illegal alien population is given legal status. It also will delay the impact of the demand for immigrant visas created by newly legalized permanent residents until after the proposed immigrant admissions system is in place and backlogs in the pertinent categories, at a minimum, are cleared.

The Commission is also recommending a new visa allocation system and slightly increased numbers of visas for admitting immigrants. Although all of the currently eligible groups of immigrants are included, new groups have been added and the preference system is restructured to give clear priority to both family members and independent immigrants. Further, the Commission has reevaluated the concept of per-country ceilings and applied them separately to the two major categories of immigrants. Per-country ceilings have been eliminated entirely for the immigration of spouses and minor children of permanent resident aliens.

These changes will remove some inequities and problems created by the existing system. However, in implementing this system the Commission is mindful of the large number of persons who have applied and are eligible for immigrant visas under the current system but who have not yet been issued visas because of high demand to immigrate in certain countries and preference categories.

The Commission had two primary avenues for dealing with these backlogged immigrant visa applicants. It could have ignored them and tranferred their status and existing priority dates to the new immigrant admissions system. Alternatively, it could have created a special and separate backlog clearance program to admit them promptly.

The Commission has sought to be fair to applicants who have waited legally overseas for their visas when many persons now residing illegally in the United States are going to receive the benefit of permanent resident status through a legalization program. Therefore, it has recommended a backlog clearance program, but within the overall numerical limit of its recommended immigrant admissions system. To further this goal, however, the Commission is recommending augmenting the 350,000 annual immigrant ceiling to 450,000 for the first five years after enactment of legislation. The temporarily increased number of available immigrant visas will enable both existing applicants and those applying under the new admissions system to enter without immediately creating large new backlogs. By clearing existing backlogs soon after enactment of legislation, the Commission is of the view that the new immigrant admissions system will have a more auspicious start.

Because of the uneven distribution of current backlogs among countries and preferences, many Commissioners are of the view that per-country and preference ceilings--although applied to new applicants under the proposed system--should not apply to those in the backlogs. These Commissioners would like to see the backlogs worked off as quickly as possible--certainly within five years--a goal impossible under per-country and preference ceilings. Within this period, however, it is also anticipated that new applicants in both the family reunification and independent immigrant categories also would be admitted.

After a legalization program takes place, newly legalized aliens will be able to petition for their relatives. The Commission is hopeful that the qualified immediate relatives of legalized aliens will be able to enter under the regular provisions of the immigrant admissions system without creating great backlogs. Many Commissioners, recognize that the relatives of newly legalized aliens may not be able to immigrate until a few years after petitions have been filed for them.

In considering the phasing-in and implementation of major new programs, the Commission is mindful of the administrative and operational impacts created and recognizes that major efforts will be required by INS and the Consular Service of the Department of State. New resources, innovative techniques, coordinated planning, new recruitment and hiring efforts, and redeployment of and concerted effort by agency personnel will be essential. Steps to accomplish these efforts will need to be undertaken at the earliest possible date to ensure the smooth transition between policies, resource requirements, and the size and nature of the workload involved. Through planned and coordinated efforts, however, the Commission is hopeful that the programs it is recommending will be efficiently and effectively implemented and will provide a structure for a practical and sound new immigration policy.

SECTION V. REFUGEE AND MASS FIRST ASYLUM ISSUES

Introduction

The United States has been a place of refuge since its earliest history. Refugees, throughout U.S. history--from the Pilgrims who landed at Plymouth Rock, to the freedom fighters from Hungary and Germany in the nineteenth century, to the Jews who managed to escape the holocaust, to the Indochinese of the present day--have been attracted by the U.S. heritage of political and religious freedom. This continuing movement to the United States of those who flee persecution has helped confirm this nation's traditional role as a champion of freedom against oppression.

The tradition of welcoming refugees has not been consistent, though. Prior to 1948, the United States had no official refugee policy (see Table 3 in Section III). In the years before World War I such a policy was unnecessary because there were few barriers placed by this country on immigration in general. After passage of the restrictive immigration legislation of the 1920s, however, the absence of special refugee provisions caused difficulties. A large portion of the post-World War I refugee population came from Eastern

Europe and Asia. Although a series of international conventions, resolutions and treaties promulgated between 1921 and 1928 enlisted support for admitting Russian, Armenian, Greek and Turkish refugees, the United States did not sign any of these international instruments and passed no domestic law to aid or specially admit members of these groups. Immigration from these areas had been severely limited by the national origins quotas. Moreover, the public charge and other exclusionary provisions of U.S. immigration law applied to all immigrants regardless of their reasons for seeking entry.

In the 1930s, a new refugee crisis emerged. In what many have termed a dark page in U.S. refugee history, the United States turned back thousands of Jews fleeing Nazi persecution. This denial of entry occurred, in part, because of the restrictionist immigration policy that did not allow special admission standards for refugees.

Since World War II, though, the U.S. humanitarian concern for refugees has been reasserted. The Displaced Persons Act of 1948, providing for the entry of more than 400,000 persons, was the first legislative reflection of special concern for refugees. The United States has since welcomed and provided resettlement help to thousands of refugees under a series of special refugee admissions programs, under the narrowly defined conditional entry provisions of the Immigration and Nationality Act Amendments of 1965, and under the parole authority of the Attorney General.

More recently, with passage of the Refugee Act of 1980, the United States has given strong statutory support, as part of its official immigration policy, to admitting refugees, regardless of their country of origin or the ideologies from which they are fleeing. In the Refugee Act, Congress declared:

> It is the historic policy of the United States to respond to the urgent needs of persons subject to persecution in their homelands, including, where appropriate, humanitarian assistance for their care and maintenance in asylum areas, efforts to promote opportunities for resettlement or voluntary repatriation, aid for necessary transportation and processing, admission to this country of refugees of special humanitarian concern to the United States, and transitional assistance to refugees in the United States. The Congress further declares that it is the policy of the United States to encourage all nations to provide assistance and resettlement opportunities to refugees to the fullest extent possible.

Today when there are millions of refugees displaced by persecution and the well-founded fear of persecution, the Refugee Act of 1980 provides a systematic procedure for the admission and resettlement of those of special humanitarian concern to the United States.

The Select Commission supports this continued U.S. commitment to the acceptance and aid of refugees, finding in that commitment not only a well-founded, humanitarian tradition but a means of both stabilizing world order and of reaping national benefit. Many underdeveloped countries of first asylum are under so great a strain from refugee flows that their political stability may depend on the resettlement help provided by the more developed countries. The Select Commission holds the view that it is in this nation's interest to maintain political stability and prevent the further migration problems which might otherwise result. Further, the United States has always benefited internally by accepting and aiding refugees. Throughout U.S. history, they have always made a strong contribution to the spirit of freedom and the economic, social and cultural well-being of the United States.

V.A. THE ADMISSION OF REFUGEES*

THE SELECT COMMISSION ENDORSES THE PROVISIONS OF THE REFUGEE ACT OF 1980 WHICH COVER THE DEFINITION OF REFUGEE, THE NUMBER OF VISAS ALLOCATED TO REFUGEES AND HOW THESE NUMBERS ARE ALLOCATED.

The Refugee Act of 1980 incorporates into U.S. law, for the first time, a coherent, practical and comprehensive framework for the admission of refugees, based on the international definition of refugee.

According to the Refugee Act of 1980:

> The term 'refugee' means . . . any person who is outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. . . . The term 'refugee' does not include any person who ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion.≁

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*Commission vote

The Commission voted on a package of proposals which form the recommendations in V.A., V.C. and V.D. Yes-11; No-3; Absent-1. The Commissioners who voted against this package of proposals stated that they did so because the votes were taken en bloc.

See Appendix B for Supplemental Statements of Commissioners Kennedy, McClory and Ochi.

≁In such special circumstances, as the President after appropriate consultation with Congress may specify, for any person who is within his or her country and would be otherwise qualified may be defined as a refugee.

By emphasizing persecution and the fear of persecution without regard to national origins, the Refugee Act establishes criteria based on special humanitarian concerns. The Act thus provides needed flexibility in defining refugee status in accordance with a universal standard that is not bound by specific ideological or geographic criteria which were used in earlier definitions.[*]

The Refugee Act established an annual allocation of 50,000 numbers per year.[†] Recognizing that foreign and domestic events could justify the admission of larger numbers, the Act also established that, when circumstances required, the President could allocate additional normal-flow refugee numbers following formal consultations with Congress. Moreover, if unforeseen events arise during the year, the President, after consultation with Congress, can allocate emergency-flow numbers. The allocation of refugee numbers for fiscal year 1981 is 217,000 or 167,000 above normal flow.

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[*] Refugees were defined in previous law as persons who fled because of persecution or well-founded fear of persecution from any Communist or Communist-dominated country or area, or from any country within the general area of the Middle East.

[†] The 50,000 limit was based on the average annual number of refugees who had come to the United States during the previous twenty years. This allocation of numbers remains in existence only through fiscal year 1982. After FY 1982, the annual allocation will be such number as the President may determine, after consultation with Congress.

As noted above, the Refugee Act formalized a procedure in which the President consults with members of the House and Senate Judiciary Committees to determine the numbers and allocation of refugees to be admitted. During these consultations, the President must provide:

- A description of the nature of the refugee situation;
- A description of the number and allocation of the refugees to be admitted and an analysis of conditions within the countries from which they came;
- A description of the proposed plans for their movement and resettlement and the estimated cost of their movement and resettlement;
- An analysis of the anticipated social, economic and demographic impact of their admission to the United States;
- A description of the extent to which other countries will admit and assist in the resettlement of such refugees;
- An analysis of the impact of the participation of the United States in the resettlement of such refugees on the foreign policy interests of the United States; and
- Such additional information as may be appropriate or requested by such members.

The consultation process has been implemented twice since the passage of the new Act. Some Commissioners believe that the process as outlined in the Refugee Act is inadequate because it can be a pro forma exercise which does not provide sufficient congressional involvement. They argue that the consultation process should give Congress the opportunity to modify the refugee numbers that are recommended by the President. Some of these Commissioners suggest that the statute be changed to require the approval of the House and Senate Judiciary Committees or to permit a one-house veto of allocations and numbers. The majority of Commissioners believe, however, that the Act itself does provide the basis for effective congressional involvement. The consultation process, they believe, gives Congress an opportunity for discussion and debate. They argue that a system that would, in effect, require Congress to legislate refugee numbers each year is not realistic. Some of these Commissioners would support efforts, however, to begin the consultation process at an earlier point in deliberations about refugee admissions in order to give Congress greater influence over the decision-making process.

V.A.1. Allocation of Refugee Numbers*

THE SELECT COMMISSION RECOMMENDS THAT THE U.S. ALLOCATION OF REFUGEE NUMBERS INCLUDE BOTH GEOGRAPHIC CONSIDERATIONS AND SPECIFIC REFUGEE CHARACTERISTICS. NUMBERS SHOULD BE PROVIDED--NOT BY STATUTE BUT IN THE COURSE OF THE ALLOCATION PROCESS ITSELF--FOR POLITICAL PRISONERS, VICTIMS OF TORTURE AND PERSONS UNDER THREAT OF DEATH.

The Refugee Act of 1980 calls for a year-by-year allocation of refugee numbers from among those who meet the definition specified in the Act. The Act also recognizes that constantly changing foreign and domestic policy considerations will influence admissions determinations and that any predetermined criteria for annual admissions would necessarily be arbitrary. Thus, the current allocation process attempts to accommodate these domestic and foreign policy considerations, while seeking the equitable selection of refugees from among those meeting the criteria of the Act.

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*Commission vote

The Select Commission voted on a package of proposals which form the recommendations in V.A., V.C. and V.D. Yes-11; No-3; Absent-1.

TABLE 10

PROPOSED REFUGEE ADMISSIONS BY REGION

(Fiscal Years 1980 and 1981)

AREA OF ORIGIN	PROPOSED ADMISSIONS Fiscal Year 1980	PROPOSED ADMISSIONS Fiscal Year 1981
Asia		
Indochina	168,000	168,000
Other	1,200	
Soviet Union	33,000	33,000
Eastern Europe	5,000	4,500
Middle East	2,500	4,500
Latin America		4,000⌿
Cuba	19,500	
Other	1,000	
Africa	1,500	3,000
TOTAL	231,700*	217,000

SOURCE: Office of the U.S. Coordinator for Refugee Affairs

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* Does not include Cuban/Haitian entrants.

⌿ 2,500 Cubans and 1,500 other Latin Americans.

Although the Refugee Act emphasizes individual criteria for refugee selection, an effective system of allocation must have procedures that will allow expeditious decision making. In practice, the U.S. government determines that members of certain groups may be presumed to have the individual characteristics necessary to qualify for refugee status. The determination on the numbers allocated to each group is made by the President, with the advice of the U.S. Coordinator for Refugee Affairs (as to expected demand, and domestic and foreign policy considerations) and after consultation with Congress. Usually, because most refugee situations can be readily described by geographic parameters, groups are defined by their geographic location. Fiscal year 1981 allocations, for example, included 168,000 refugee numbers to Indochina; 33,000 to the Soviet Union; 4,500 to Eastern Europe; 4,500 to the Near East; 4,000 to Latin America (including 2,500 to Cuba) and 3,000 to Africa (see Table 10).

Under recent application of the law, some critics have argued that equity has been undermined by a too rigid dependence on geographical determinations in the allocation of refugee numbers to those who meet U.S. criteria. These critics believe that this distribution of refugee numbers has afforded the President and Congress insufficient flexibility. In practice, they argue, this lack of flexibility has adversely affected the admission of refugees from Latin America and Africa. Despite the elimination of previously mandated ideological and geographic criteria, they contend a lingering presumption persists in favor of allocating the bulk of numbers to refugees from communist countries.*

The Commission does not believe that statutory changes in the allocation process are necessary, but does recommend that in the course of allocation, specific numbers be provided for political prisoners, victims of torture and persons under threat of death, regardless of their geographic origin. The use of an additional allocation based on refugee characteristics would:

- Increase flexibility and institute greater equity in allocations, following the intent of the Refugee Act of 1980;
- Demonstrate that political prisoners, victims of torture and persons under threat of death because of their religion, race, nationality or political opinions are of special humanitarian concern to the United States;
- Give the same presumptive status to these individuals as that granted to persons fleeing specific countries known to enforce policies of persecution without any change in statute; and
- Permit entry from a greater range of countries and regions without enumerating all of these areas.

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*The allocation of 4,000 numbers to Latin America and 3,000 to Africa can also be explained by the tendency, in these regions, to focus upon local resettlement.

V.B.1. Planning For Asylum Emergencies*

THE SELECT COMMISSION RECOMMENDS THAT AN INTERAGENCY BODY BE ESTABLISHED TO DEVELOP PROCEDURES, INCLUDING CONTINGENCY PLANS FOR OPENING AND MANAGING FEDERAL PROCESSING CENTERS, FOR HANDLING POSSIBLE MASS ASYLUM EMERGENCIES.

Recent experience has highlighted the importance of advanced planning in dealing with mass first asylum emergencies. Situations comparable to the Haitian migration and the Cuban push-out may arise in the future. To deal with these situations, the United States needs a clear federal strategy to provide care for potential asylees while their individual cases are being determined.

Among the many problems experienced in 1980 were the lengthy delays in processing Haitian claims, the perception on the part of many persons that Haitians were being discriminated against because of race, the vacillating policy of the federal government with respect to work authorization for Haitians, the haphazard placement of Cubans in processing centers, the strong, negative public reaction in communities with processing centers and the difficulty in finding persons skilled in delivering the kinds of services required by the centers. Most of these problems could have been avoided with proper planning and the coordination of the efforts of the various public and private agencies involved in the processing of asylum claims and the care and housing of the applicants.

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*Commission vote

Yes-12; No-3; Pass-1.

The Commission recommends that an interagency body be established to develop procedures for handling possible mass asylum emergencies in the future. A variety of agencies needs to be involved, including the White House, the U.S. Coordinator for Refugee Affairs, INS, the Departments of State, Justice, Health and Human Services and Education, the Department of the Army and the Federal Bureau of Investigation. In addition, voluntary agencies and local government representatives from communities located near potential processing centers must also be involved if tensions are to be minimized. Planning will facilitate the rapid and fair processing of asylum petitions, and allow the establishment of clear lines of authority and responsibility for asylum emergencies.

The Select Commission further recommends that this planning body develop contingency plans for opening and managing federal asylum processing centers, where asylum applicants would stay while their applications were processed quickly and uniformly. Although some Commissioners who voted against this proposal believe that the existence of such centers could act as an incentive to those using asylum claims as a means of gaining entry to the United States, the Commission majority holds that these centers could provide a number of important benefits:

- Large numbers of asylum applications could be processed quickly. No delays would result because addresses were unknown or because of the time required to travel to an examination site;
- Staff whose training and experience make them uniquely qualified to deal with mass asylum situations could be provided;
- Applicants could be centrally housed, fed and given medical aid;
- Law enforcement problems, which might arise as a result of a sudden influx of potential asylees, could be minimized;
- Resettlement of those applicants who, for a variety of reasons, were not accepted by the United States would be facilitated by providing a setting for the involvement of the U.N. High Commissioner for Refugees and the regional mechanism the Commission has proposed to deal with migration issues. (see Section I on International Issues);
- Ineligible asylum applicants would not be released into communities where they might later evade U.S. efforts to deport them or create costs for local governments; and
- A deterrent would be provided for those who might see an asylum claim as a means of circumventing U.S. immigration law. Applicants would not be able to join their families or obtain work while at the processing center.

V.B.2. Determining the Legitimacy of Mass Asylum Claims*

THE SELECT COMMISSION RECOMMENDS THAT MASS ASYLUM APPLICANTS CONTINUE TO BE REQUIRED TO BEAR AN INDIVIDUALIZED BURDEN OF PROOF. GROUP PROFILES SHOULD BE DEVELOPED AND USED BY PROCESSING PERSONNEL AND AREA EXPERTS (SEE RECOMMENDATION V.B.4.) TO DETERMINE THE LEGITIMACY OF INDIVIDUAL CLAIMS.

While the Refugee Act specifies that an alien may be granted asylum if he/she is found to be a refugee (as defined in the Refugee Act of 1980), the process to establish asylee status in the United States is usually quite different from that used to determine refugee status outside the country. A person who belongs to a group qualified for refugee status is accorded a strong presumption of eligibility which works to that potential refugee's benefit, and is primarily examined to ensure only that he/she is not excludable from the United States. A petitioner for refugee status is asked relatively few questions--only those having to do with his/her reasons for leaving his/her country.

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*Commission vote

The Select Commission voted on a package of proposals that form Recommendations V.B.1. to V.B.5. Yes-13; No-1; Absent-1.

In contrast, asylum applicants in the past have had to bear an individualized burden of proof in establishing a claim for asylum. The procedures through which these claims have been evaluated have sometimes been excessively rigorous. INS procedures and judicial decisions permit the INS to require the applicant to produce documentary evidence and eye witnesses to substantiate his/her claim. These burden-of-proof steps have had the undesirable effects of leaving many of them in limbo while the courts process their claims, and adding another burden to the judicial system.

Further, asylum applications, before a final decision is made, require an advisory opinion from the Bureau of Human Rights and Humanitarian Affairs of the Department of State. This opinion, based on written evidence taken from INS interviews with the applicant and appraisals by the Department's regional experts, often determines an applicant's status. An applicant, however, is severely limited in his/her ability to rebut a State Department opinion since efforts to obtain documentation or the testimony of government officials may be resisted.*

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*An asylum applicant's efforts to obtain official documentation or the testimony of government officials may be resisted on claims of privilege under Executive Order 11652--although this rarely occurs--or for reasons regarding the impact of the alien's allegations on diplomatic relations between the United States and foreign countries.

Consultants to the Select Commission on Immigration and Refugee Policy have argued that the procedures in asylum determinations are overly tedious. Instead they have recommended that, since the grounds on which persons are to be granted asylum are identical to those applicable to refugees, similar processes be used to determine the legitimacy of refugee and asylee claims. In the case of mass first asylum situations, this theory is in line with practical needs. Long, drawn-out processing of asylum claims is in the interest of neither the potential asylee nor the United States.

The Select Commission holds the view that the processing of asylum claims could be expedited and improved by developing group profiles based on evidence about how members of particular religious and ethnic groups or those with particular political and social affiliations are treated in different countries. Dealing with groups within countries rather than countries themselves, these profiles should expedite large numbers of asylum claims by providing information on which presumptions can be made about the validity of such claims, and ending the particularized procedure of treating every asylum claim as unprecedented. The Commission is of the opinion that presumptive evidence, now used in refugee determinations, would work equally well in the selection of asylees.

V.B.3. Developing and Issuing Group Profiles[*]

THE SELECT COMMISSION RECOMMENDS THAT THE RESPONSIBILITY FOR DEVELOPING AND ISSUING GROUP PROFILES BE GIVEN TO THE U.S. COORDINATOR FOR REFUGEE AFFAIRS.

The U.S. Coordinator for Refugee Affairs already has the major responsibility for the development of operational refugee policy and presents to the President and Congress the rationale for allocating refugee numbers to particular groups. The Coordinator's Office has access to relevant State Department information, data generated by other federal agencies and independent human rights agencies, information from countries where asylum claims are currently large and information from the U.N. High Commissioner for Refugees. Some of those Commissioners who voted against this proposal indicated that they would prefer that this responsibility be given to the State Department since that department already issues advisory opinions that are the closest existing approximation of a group profile and which aid the determination of asylum claims.[†] However, profiles issued by the Department of State might be affected, in the view of some Commissioners, by the international politics of the moment and the profiles themselves might lack credibility. In placing the responsibility for the generation of group asylee profiles with the U.S. Coordinator, the Select Commission majority recognizes that office's expertise and access to information (beyond that of the State Department) necessary to fulfill that function.

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[*] Commission vote

The Select Commission voted on a package of proposals that form Recommendations V.B.1. to V.B.5. Yes-13; No-1; Absent-1.

[†] Commission vote

Vote taken on specific motion to give responsibility to the U.S. Coordinator for Refugee Affairs. Yes-10; No-4; Absent-1.

V.B.4. Asylum Admissions Officers*

THE SELECT COMMISSION RECOMMENDS THAT THE POSITION OF ASYLUM ADMISSIONS OFFICER BE CREATED WITHIN THE IMMIGRATION AND NATURALIZATION SERVICE. THIS OFFICIAL SHOULD BE SCHOOLED IN THE PROCEDURES AND TECHNIQUES OF ELIGIBILITY DETERMINATIONS. AREA EXPERTS SHOULD BE MADE AVAILABLE TO THESE PROCESSING PERSONNEL TO PROVIDE INFORMATION ON CONDITIONS IN THE SOURCE COUNTRY, FACILITATING A WELL-FOUNDED BASIS FOR ASYLUM DETERMINATIONS.

The factual situations giving rise to asylum claims are so complex that special expertise is needed to determine the validity of the claims. At present, however, the training and competence of INS officers who handle such cases varies widely. In addition, the procedure by which these officers are assigned asylum claims is often determined not by their ability to handle these claims, but by the asylum petitioner's method of entering the country or coming into contact with INS. The Select Commission believes that expeditious, equitable and uniform decisions on asylum petitions require special training for those officers who must make asylum determinations.

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*Commission vote

The Select Commission voted on a package of proposals that form Recommendations V.B.1. to V.B.5. Yes-13; No-1; Absent-1. Vote taken on an amendment proposed by Commissioner Fish on use of area experts in asylum determinations.

This need for a specially trained Asylum Admissions Officer was also recognized in the recommendations adopted in 1977 by the Executive Committee of the U.N. High Commissioner for Refugees, and endorsed by the U.S. delegation. Other documentation from the U.N. High Commissioner for Refugees also emphasizes the crucial nature of the initial asylum interview--a process requiring great sensitivity to slight differences in applicants' situations, as well as good grounding in interviewing techniques (including those which test credibility) and in the legal principles underlying the definition of an asylee.

The Commission also recommends that properly trained officials in charge of the initial determinations should have the aid of area experts, to provide information on conditions in the source country. With the assistance of these experts and the use of carefully drawn group profiles, it will be possible to have greater confidence in the uniform quality and equity of initial decisions.

V.B.5. Asylum Appeals*

THE SELECT COMMISSION HOLDS THE VIEW THAT IN EACH CASE A SINGLE ASYLUM APPEAL BE HEARD AND RECOMMENDS THAT THE APPEAL BE HEARD BY WHATEVER INSTITUTION ROUTINELY HEARS OTHER IMMIGRATION APPEALS.

Present arrangements for hearings and review in exclusion and deportation cases involving petitioners for asylum have been criticized because of the extensive delays involved. Arguing that due process should be appropriate to the situation involved, experts have testified that extensive judicial appeals do not necessarily afford due process to those aliens who have been denied asylum. They may simply create delays and undermine confidence in immigration policy, as well as invite large-scale migrations which are either fraudulent or based on the erroneous assumption that arrival in the United States is tantamount to admission.

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*Commission vote

Commissioners voted on a package of proposals that form Recommendations V.B.1. to V.B.5. Yes-13; No-1; Absent-1.

When dealing with large numbers of persons in mass first asylum situations, it is important to have a clear and rapid decision made by an admissions officer. It is equally important to have a competent body able to make a thorough and expeditious review of that decision if the petitioner appeals. If immigration appeals remain in the Board of Immigration Appeals, the Commission believes that special panels should be appointed to sit on asylum cases. If an Article I Court, as recommended by the Commission, is created, review of immigration appeals should be given to this body. (see Recommendation VII.B.3.).

V.C. REFUGEE RESETTLEMENT*

THE SELECT COMMISSION ENDORSES THE OVERALL PROGRAMS AND PRINCIPLES OF REFUGEE RESETTLEMENT BUT TAKES NOTE OF CHANGES THAT ARE NEEDED IN THE AREAS OF CASH AND MEDICAL ASSISTANCE PROGRAMS, STRATEGIES FOR RESETTLEMENT, PROGRAMS TO PROMOTE REFUGEE SELF-SUFFICIENCY AND THE PREPARATION OF REFUGEE SPONSORS.

The major responsibility for the domestic resettlement of refugees has historically rested not with the federal government, which is responsible for initially accepting refugees, but with voluntary associations of private citizens and with state and local governments. During the past two decades, however, the federal government has participated to a greater extent in programs to facilitate resettlement. The Select Commission holds the view that such participation is justified. If the United States intentionally admits a group of refugees, it should, in turn, help these people overcome any liabilities that are linked to their refugee status so that they can quickly become productive, participating members of society.

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*Commission vote

The Select Commission voted on a package of proposals that form the recommendations in Section V.A., V.C. and V.D. Yes-11; No-3; Absent-1.

See Appendix B for the Supplemental Statement of Commissioner Kennedy on this subject.

use table

Recognizing the ever-increasing complexity and expense of living in the United States, the federal government has rightly acknowledged that voluntary organizations, though still entrusted with the largest share of resettlement responsibility, cannot be expected to meet all the financial expenses involved. The Refugee Act of 1980 authorizes federal reimbursement to the voluntary agencies, states and localities that provide resettlement assistance to refugees. Through the Office of Refugee Resettlement (ORR) in the Department of Health and Human Services (HHS), the federal government supports projects that promote economic self-sufficiency (including job training, employment services, day care, retraining and recertification of professionals), develop English-language ability and provide health services (see Appendix E, Role of the Federal Government in Immigration and Refugee Policy).

The Refugee Act also authorizes the Office of Refugee Resettlement to reimburse states and public and private agencies for cash and medical assistance provided to a refugee for up to 36 months after the refugee first enters the United States. Cash assistance to an employable refugee is contingent upon the refugee's willingness to accept appropriate employment after the first 60 days of U.S. residence. Special medical assistance may be given to needy refugees, not otherwise eligible for state Medicaid programs. This assistance, provided up to the first year of residence, is warranted if such assistance would

TABLE 11

SELECTED REFUGEE PROGRAMS

PROGRAM	ELIGIBILITY	FUNDING
Social Services	Refugees are eligible for a wide range of services if they meet the same income and resource criteria as the general population and for certain refugee high-priority services (e.g., English-language training) if they meet criteria specified by the Office of Refugee Resettlement (ORR).	For the general population, the Department of Health and Human Services (HHS) pays for roughly 75% under Title XX of the Social Security Act. For services to refugees, including special programs for refugees, ORR funds 100%, to the extent of available funds.
Cash Assistance		
Aid to Families with Dependent Children (AFDC)	Income and family composition criteria vary from state to state; refugees must meet these criteria to qualify.	For the general population, there is a federal-state matching system. For refugees, ORR reimburses the states for their portion of the costs.
Supplemental Security Income (SSI)	Aid to the blind, the disabled and the aged; refugees must meet the same criteria as the general population.	The Social Security Administration provides funds which certain states supplement. For refugees, ORR reimburses states for their supplements.
Refugee Program Assistance	Income criteria are similar to those for AFDC, but the family composition criteria are not applied. This program is only for refugees who do not qualify for AFDC or SSI.	States distribute funds, but are fully reimbursed by ORR.
Medical Assistance		
Medicaid	Available to those who qualify for AFDC or SSI.	Health Care Financing Administration shares costs with states. ORR reimburses the states for their portion of the costs for refugees.
Refugee Program Medical Assistance	Criteria similar to Medicaid, but family composition requirements are not applied. This program is only for refugees who do not qualify for Medicaid.	ORR funds full cost of program.
Education		
Bilingual Education	Available to all students with limited proficiency in the English language.	Department of Education (ED) funds various kinds of projects through grants to local educational agencies, institutes of higher learning and nonprofit organizations.
Bilingual/Vocational Education	Any person not enrolled in school, with limited English-language ability, and seeking advancement in employment; not specifically intended for refugees.	Various educational agencies compete for grants from ED to support instruction, teacher training and materials development.
Adult Education	Intended for immigrants and Indochinese refugees, but others, in limited numbers, may participate.	Same as above.
Transition Program for Refugee Children	Intended for refugee children enrolled in public and nonprofit private elementary and secondary schools who need English-language instruction.	HHS transfers funds to ED to administer the program through formula grants.
Employment		
Comprehensive Employment and Training Act (CETA)	Eligibility requirements vary and depend on local economic and employment conditions. Refugees are given no special consideration, but areas with high refugee populations have developed programs to meet their needs.	Department of Labor provides funding to prime sponsors.
Job Corps	Unemployed youths between the ages of 16 and 21 are eligible. In some areas, programs and resources have been adapted to meet the needs of refugees.	Department of Labor provides funding to prime sponsors.
Targeted Jobs Tax Credit	Programs provides tax incentives to employers to hire individuals from disadvantaged groups. In certain cases, refugees are considered one of these groups.	....

encourage economic selfsufficiency, ease a burden on state and local governments, and if the refugee meets certain income requirements (see Table 11).

Under the Refugee Act of 1980, the Departments of Health and Human Services and State are required to evaluate the effectiveness of the various federally funded programs designed to facilitate refugee resettlement. The Secretary of HHS, in consultation with the Coordinator, is also required to conduct and report to Congress, not later than one year after the date of enactment of the Refugee act, an analysis of

- resettlement systems used by other countries and the applicability of such systems to the United States;
- the desirability of using a system other than the current welfare system for the provision of cash assistance, medical assistance, or both to refugees; and
- alternative resettlement strategies.

Preliminary data on the experiences of Indochinese refugees who have been in the United States since 1975 indicate that resettlement programs have been generally successful, if success is measured by the adjustment and adaptation of refugees to U.S. society. Indochinese refugees have entered the labor force in increasing numbers each year and are rapidly becoming economically self-sufficient. The income that is attributed to employment has increased with length of stay in the United States, as has the amount of monthly income. Moreover, the proportion of Indochinese refugees receiving cash assistance has decreased with length of residence. In a survey conducted by HHS in April 1979, 43.9 percent of refugee households that entered in 1977 were receiving cash assistance while only 18.8 percent of those who entered in 1975 were doing so. Most of those refugees still receiving cash assistance were enrolled in English-language or vocational training programs. It appears, then, that the longer their length of residence in this country, the less refugees are dependent on the special programs designed to aid them in their transition.

Select Commission research indicates, however, that there are still some major weaknesses in refugee resettlement procedures and programs:

- Communities, although reimbursed for welfare and medical costs, do not receive financial assistance to cover the financial burden placed on community services by large numbers of refugees;
- Some refugees have had problems in becoming economically self-sufficient within the 36 months of their eligibility for federal benefits;
- Some refugees have become too dependent on cash-assistance programs;
- Because medical and welfare assistance are administered by the same agencies, many refugees and/or their sponsors link the receipt of state welfare funds and the receipt of medical assistance despite separation of these two forms of assistance in the Refugee Act. Refugees, who might otherwise not apply for cash assistance accept welfare funds because of medical needs;

- The major voluntary agencies responsible for resettlement do not always maintain adequate control over their affiliates nor do they always provide adequate preparation of local sponsors;

- Earlier emphasis on the dispersal of Indochinese refugees has resulted in secondary migration to a few metropolitan centers; and

- Insufficient emphasis has been placed on survival training that can lead to early employment and the achievement of self-sufficiency.

Many, if not most, of these problems are currently being addressed by those responsible for the resettlement of refugees (see Appendix F, U.S. Refugee Programs: Resettlement Needs and Initiatives Undertaken). The Commission, nevertheless, makes the following recommendations regarding improvements in the procedures and processes of resettlement to illustrate desirable objectives in this area.

V.C.1. State and Local Governments*

THE SELECT COMMISSION RECOMMENDS THAT STATE AND LOCAL GOVERNMENTS BE INVOLVED IN PLANNING FOR INITIAL REFUGEE RESETTLEMENT AND THAT CONSIDERATION BE GIVEN TO ESTABLISHING A FEDERAL PROGRAM OF IMPACT AID TO MINIMIZE THE FINANCIAL IMPACT OF REFUGEES ON LOCAL SERVICES.

State and local governments play a major role in refugee resettlement. State and local officials have knowledge of developments in their areas which are essential to forming effective resettlement strategies. Yet, many state and local officials have felt left out of national resettlement policy decision making. The Select Commission recommends that consideration be given to increasing their involvement in planning for initial refugee resettlement.

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*Commission vote

The Select Commission voted on a package of proposals which form the Recommendations in Sections V.A., V.C. and V.D. Yes-11; No-3; Absent-1.

An amendment proposed by Commissioner Ochi introduced this recommendation. Yes-9; No-3; Pass-1; Absent-2.

The burden of resettlement has fallen more heavily on some communities than on others (see Table 12). According to figures compiled by ORR, as of December 31, 1980, California has the highest concentration of Indochinese refugees (145,486) followed by Texas (38,516) and Washington (19,774). Areas with high concentrations of refugees, are adversely affected by increased pressures on schools, hospitals and other community services. Although the federal government provides 100 percent reimbursement for cash and medical assistance for three years, it does not provide sufficient aid to minimize the impact of refugees on community services. The Select Commission recommends that consideration be given to establishing a federal program of impact aid to minimize the financial impact of refugees on local services.

V.C.2. Refugee Clustering*

THE SELECT COMMISSION RECOMMENDS THAT REFUGEE CLUSTERING BE ENCOURAGED. MECHANISMS SHOULD BE DEVELOPED, PARTICULARLY WITHIN THE VOLUNTARY AGENCY NETWORK, TO SETTLE ETHNIC GROUPS OF SIMILAR BACKGROUNDS IN THE SAME AREAS.

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*Commission vote

The Select Commission voted on a package of proposals that form the Recommendations in Sections V.A., V.C. and V.D. Yes-11; No-3; Absent-1.

The initial resettlement of Indochinese refugees followed a pattern of dispersal that has led to a great deal of secondary migration. In order to minimize the impact of refugees upon communities, refugees were placed in many different areas of the country, but, with time, many of them moved to a few areas that ended with high concentrations of refugees (see Table 13). Experts now believe that ethnic coalescence is not only a fact of life, but that it can be a beneficial development as long as clusters are not so large that they overburden local services. The development of refugee communities, they argue, provides support systems for newcomers, eases the shock of adjustment and transition, and through the development of ethnic associations and cultural centers, reduces the motivation for secondary migration to areas of high concentration of refugees. The Select Commission recommends that refugee clustering be encouraged in appropriate circumstances.

TABLE 12

CURRENT INDOCHINESE REFUGEE POPULATION IN THE U.S. BY STATE AS OF DECEMBER 31, 1980

Alabama	2,335
Alaska	439
Arizona	3,065
Arkansas	2,736
California	145,486
Colorado	7,912
Connecticut	4,246
Delaware	266
District of Columbia	3,583
Florida	9,005
Georgia	4,695
Hawaii	6,039
Idaho	836
Illinois	16,596
Indiana	3,919
Iowa	7,238
Kansas	5,619
Kentucky	1,868
Louisiana	10,873
Maine	655
Maryland	4,894
Massachusetts	7,036
Michigan	8,184
Minnesota	14,964
Mississippi	1,401
Missouri	4,473
Montana	1,052
Nebraska	2,099
Nevada	1,947
New Hampshire	299
New Jersey	4,242
New Mexico	2,251
New York	13,059
North Carolina	3,884
North Dakota	595
Ohio	6,355
Oklahoma	6,532
Oregon	13,144
Pennsylvania	17,848
Rhode Island	2,423
South Carolina	1,648
South Dakota	920
Tennessee	3,427
Texas	38,516
Utah	5,890
Vermont	262
Virginia	12,346
Washington	19,774
West Virginia	440
Wisconsin	6,187
Wyoming	330
Virgin Islands	8
Guam	392
Puerto Rico	35
Other & unknown	287
TOTAL	444,555

NOTE: Office of Refugee Resettlement, Department of Health and Human Services, printed in Refugee Reports, February 7, 1981.

TABLE 13

ESTIMATED NET SECONDARY MIGRATION OF INDOCHINESE REFUGEES BY STATE

February 1, 1978--January 31, 1979

State	Estimated Secondary Migration*	State	Estimated Secondary Migration*
Alabama	-351	Nevada	+105
Alaska	-47	New Hampshire	-18
Arizona	-90	New Jersey	-136
Arkansas	-194	New Mexico	-178
California	+7,259	New York	-837
Colorado	+144	North Carolina	-26
Connecticut	-131	North Dakota	-81
Delaware	-24	Ohio	-478
D. C.	-212	Oklahoma	-431
Florida	-1,006	Oregon	+205
Georgia	-289	Pennsylvania	-522
Hawaii	-324	Rhode Island	+32
Idaho	-78	South Carolina	-121
Illinois	-450	South Dakota	-129
Indiana	-295	Tennessee	-293
Iowa	-295	Texas	+1,762
Kansas	+137	Utah	-188
Kentucky	-132	Vermont	-7
Louisiana	-8	Virginia	-260
Maine	-44	Washington	+75
Maryland	-320	West Virginia	-29
Massachusetts	-65	Wisconsin	-318
Michigan	-145	Wyoming	+4
Minnesota	-356	Guam	-39
Mississippi	-91	Puerto Rico	-4
Missouri	-884	Virgin Islands	+3
Montana	-51	Other or unknown	+511
Nebraska	-254		
		TOTAL	0≠

SOURCE: Taken from Department of Health, Education and Welfare, Office of Refugee Affairs, Report to Congress: IndoChinese Refugee Assistance Program, December 31, 1979, p. 15.

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*Estimated net inflow (+) or net outflow (-) of refugees from or to other states. Derived from adjusted INS alien registration and data on initial resettlement location of new refugees who arrived in the United States between February 1, 1978 and January 31, 1979.

≠The net inflow and net outflow were 10,234 each.

V.C.3. Resettlement Benefits*

THE SELECT COMMISSION RECOMMENDS THAT CONSIDERATION BE GIVEN TO AN EXTENSION OF FEDERAL REFUGEE ASSISTANCE REIMBURSEMENT.

Although the majority of refugees become economically self-sufficient within 36 months, some refugees need a longer period of time to adjust to U.S. life. Many state and local officials are concerned that the costs of resettlement assistance will continue beyond the period of federal reimbursement and that the burden of providing services will then fall upon their governments. The Commission believes that Congress should consider the possibility of an expansion of federal reimbursement for benefits received after the current 36 months of eligibility.

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*Commission vote

The Select Commission voted on a package of proposals that form the recommendations in Sections V.A., V.C. and V.D. Yes-11; No-3; Absent-1. An amendment proposed by Commissioner Ochi introduced this recommendation. Yes-9; No-3; Pass-1; Absent-2.

V.C.4. Cash-Assistance Programs*

THE SELECT COMMISSION RECOMMENDS THAT STRICTER REGULATIONS BE IMPOSED ON THE USE OF CASH-ASSISTANCE PROGRAMS BY REFUGEES.

Weak regulation of cash-assistance programs may lead to overuse of the welfare system. Such overuse is counterproductive and, instead of promoting the self-sufficiency of refugees, may result in their permanent dependence on the welfare system.

Although fears regarding welfare often are exaggerated in refugee situations, some abuse of cash-assistance programs does exist. Because they are guaranteed full federal reimbursement of refugee-benefit costs for three years, states have little incentive to enforce eligibility requirements or monitor assistance expenditures. Refugees can sometimes collect from more than one funding source because of the poor monitoring mechanisms that are used. More effective regulation of these programs is required to meet this problem and to ensure that refugees do not become overly dependent on the welfare system.

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*Commission vote

The Select Commission voted on a package of proposals that form the recommendations in Sections V.A., V.C. and V.D. Yes-11; No-3; Absent-1.

V.C.5. Medical-Assistance Programs*

THE SELECT COMMISSION RECOMMENDS THAT MEDICAL ASSISTANCE FOR REFUGEES SHOULD BE MORE EFFECTIVELY SEPARATED FROM CASH-ASSISTANCE PROGRAMS.

The Refugee Assistance Act authorizes the provision of medical assistance to refugees apart from any need for cash assistance. Nevertheless, because the same agencies administer both programs, medical assistance is often linked to cash assistance in the minds of many refugees and sponsors, even in cases where there is less need for the latter. According to Commission-sponsored research, a major reason refugees do not discontinue cash assistance and become fully employed is that they fear the loss of medical benefits. These medical benefits are needed not only because refugees bring with them the debilitating effects of life in refugee camps, but because many of the jobs for which they qualify provide no medical insurance.

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*Commission vote

The Select Commission voted on a package of proposals that form the recommendations in Sections V.A., V.C. and V.D. Yes-11; No-3; Absent-1.

V.C.6. Resettlement Goals*

THE SELECT COMMISSION RECOMMENDS THAT REFUGEE ACHIEVEMENT OF SELF-SUFFICIENCY AND ADJUSTMENT TO LIVING IN THE UNITED STATES BE REAFFIRMED AS THE GOAL OF RESETTLEMENT. IN PURSUANCE OF THIS GOAL, "SURVIVAL" TRAINING--THE ATTAINMENT OF BASIC LEVELS OF LANGUAGE AND VOCATIONAL SKILLS--AND VOCATIONAL COUNSELING SHOULD BE EMPHASIZED. SANCTIONS (IN THE FORM OF TERMINATION OF SUPPORT AND SERVICES) SHOULD BE IMPOSED ON REFUGEES WHO REFUSE APPROPRIATE JOB OFFERS, IF THESE SANCTIONS ARE APPROVED BY THE VOLUNTARY AGENCY RESPONSIBLE FOR RESETTLEMENT, THE CASH-ASSISTANCE SOURCE AND, IF INVOLVED, THE EMPLOYMENT SERVICE.

Experts who testified before the Select Commission have cautioned that a successful resettlement program requires agreement on the goals of resettlement. Unless there is agreement, they believe that there is a danger that service providers will work at cross purposes, fail to provide needed services, delay refugee adjustment, or fail to coordinate all parts of strategy for the resettlement. The Select Commission recommends that refugee achievement of self-sufficiency and adjustment to living in the United States be reaffirmed as the goal of resettlement and that "survival" training and early job acquisition be emphasized as the means to achieve that goal.

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*Commission vote

The Select Commission voted on a package of proposals that form the recommendations in Sections V.A., V.C. and V.D. Yes-11; No-3; Absent-1.

The Select Commission holds the view that early employment has therapeutic and tangible results in most refugee cases, and that too much emphasis on extended language and vocational training, leading to high levels of proficiency, can result in unnecessary deferrals of employment. Research examined by the Commission indicates that English-language training is often more effective when pursued in combination with employment. The Refugee Act of 1980 recognizes that job refusals should lead to sanctions, but efforts along these lines have been ineffective. The Commission recommends that the existing provisions for dealing with job refusals should be more effectively enforced.

V.C.7. Sponsors*

THE SELECT COMMISSION RECOMMENDS THAT IMPROVEMENTS IN THE ORIENTATION AND PREPARATION OF SPONSORS BE PROMOTED.

The Commission recognizes that the refugee sponsor is often the key figure in resettlement efforts. It is the sponsor with whom the average refugee comes into the most frequent contact, not the voluntary agency that finds the sponsor or the federal government that provides part of the funding. According to experts, the failure to orient sponsors can have serious consequences. It can lead, they argue, to unrealistic expectations, misunderstandings, a failure to develop a working relationship between refugee and sponsor, missed opportunities, prolonged dependency and other problems. Sponsors need specific information about refugee behavior and experiences, services that are available in their localities, and strategies for successful resettlement. Sponsors also need general guidance and encouragement from those who have had similar experiences and have dealt with similar problems. This aid can come from state and local resettlement programs and from voluntary agencies. Progress is now being made by the State Department in negotiating contracts that specify the responsibilities of voluntary agencies toward refugee sponsors. The Commission holds the view that improvement in the orientation and preparation of sponsors should be given priority.

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*Commission vote

The Select Commission voted on a package of proposals that form the recommendations in Sections V.A., V.C. and V.D. Yes-11; No-3; Absent-1.

V.D. ADMINISTRATION OF U.S. REFUGEE AND MASS ASYLUM POLICY

V.D.1. Streamlining of Resettlement Agencies*

THE SELECT COMMISSION RECOMMENDS THAT THE ADMINISTRATION, THROUGH THE OFFICE OF THE COORDINATOR FOR REFUGEES, BE DIRECTED TO EXAMINE WHETHER THE PROGRAM OF RESETTLEMENT CAN BE STREAMLINED TO MAKE GOVERNMENT PARTICIPATION MORE RESPONSIVE TO THE FLOW OF REFUGEES COMING TO THIS COUNTRY. PARTICULAR ATTENTION SHOULD BE GIVEN TO THE QUESTION OF WHETHER EXCESSIVE BUREAUCRACY HAS BEEN CREATED, ALTHOUGH INADVERTENTLY, PURSUANT TO THE REFUGEE ACT OF 1980.

One of the objectives of the Refugee Act of 1980 was the establishment of an effective and responsive federal and state apparatus to administer U.S. refugee policy. The Act gives specific statutory authority to two federal agencies: the Office of Refugee Resettlement (ORR) and the Office of the U.S. Coordinator for Refugee Affairs. The Office of Refugee

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*Commission vote

The Select Commission voted on a package of proposals that form the recommendations in V.D. Yes-11; No-3; Absent-1.

An amendment proposed by Commissioner Fish introduced this recommendation. Yes-10; No-3; Absent-2.

Resettlement was given the responsibility for funding and administering all major domestic assistance programs for refugees. The Coordinator's Office was given the responsibility for advising the President on refugee policy and for coordinating the activities of all the federal agencies responsible for refugee admissions and resettlement.

The Refugee Act also specified that, as a condition for receiving reimbursement for refugee services, a state must submit a plan which provides:

- a description of how the state intends to encourage effective refugee resettlement and to promote economic self-sufficiency as quickly as possible;
- a description of how the state will ensure that language training and employment services are made available to refugees receiving cash assistance;
- for the designation of an individual employed by the state, who will be responsible for ensuring coordination of public and private resources in refugee resettlement;
- for the care and supervision of and legal responsibility for unaccompanied refugee children in the state; and
- for the identification of refugees who at the time of resettlement in the state are determined to have medical conditions requiring, or medical histories indicating a need for, treatment or observation and such monitoring of such treatment or observation as may be necessary.

The state must also meet standards, goals and priorities, developed by the Director of the Office of Refugee Resettlement, to assure the effective resettlement and adjustment of refugees.

The Select Commission is in agreement with the goal of the Refugee Act regarding federal and state responsibility, and supports efforts to make the federal and state bureaucracy as responsive as possible to public needs. The Commission further believes that the public interest in efficient administration of U.S. refugee policy can best be served by frequent and complete evaluation of the programs of resettlement to determine if they can be streamlined to make government participation more responsive to the flow of refugees coming to this country. The Commission recommends that particular attention be given to the question of whether excessive bureaucracy has been created, although inadvertently, as a result of the Refugee Act of 1980.

V.D.2. U.S. Coordinator for Refugee Affairs*

THE SELECT COMMISSION RECOMMENDS THAT THE OFFICE OF THE U.S. COORDINATOR FOR REFUGEE AFFAIRS BE MOVED FROM THE STATE DEPARTMENT AND BE PLACED IN THE EXECUTIVE OFFICE OF THE PRESIDENT.

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*Commission vote

The Select Commission voted on a package of proposals that form the recommendations in Sections V.A., V.C. and V.D. Yes-11; No-3; Absent-1.

The Refugee Act of 1980 makes the U.S. Coordinator for Refugee Affairs directly responsible to the President for the performance of all of his/her duties, except those involving foreign negotiations.* It does not, however, make any reference to the physical location of the Coordinator's office. The President was given the discretionary authority to place the Coordinator wherever he/she feels this office is most appropriate over time. However, most of the Conferees believed that the President should move the Coordinator to the Executive Office, to give the Coordinator the governmentwide authority the office needs.

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*Section 301 of the Refugee Act of 1980 details the responsibilities of the U.S. Coordinator for Refugee Affairs:

- to develop overall U.S. refugee admission and resettlement policy;
- to coordinate all domestic and international refugeee admission and resettlement programs to assure that policy objectives are met in a timely fashion;
- to design an overall budget strategy to provide individual agencies with policy guidance on refugee matters in the preparation of their budget requests, and to provide the Office of Management and Budget with an overview of all refugee-related budget requests;
- to present to Congress the Administration's overall refugee policy and the relationship of each agency's refugee budget to that overall policy;
- to advise the President, Secretary of State, Attorney General and the Secretary of Health and Human Services on the relationship of overall U.S. refugee policy to the admission and resettlement of refugees;
- (under the direction of the Secetary of State) to represent and negotiate for the United States with foreign governments and international organizations in discussions on refugee matters and, when appropriate, to submit refugee issues for inclusion in other international negotiations;

The Coordinator's office has been housed, since its creation, in the Department of State. The Commission holds the view that this location, in a department primarily concerned with international issues, belies the intention of the Refugee Act. It fails to emphasize the true proportions of foreign and domestic policy concerns in the development and implementation of refugee policy. Such policy deals not only with negotiations and interactions with foreign governments and international agencies, but also involves the domestic resettlement of refugees who are accepted for admission. Further, the Commission finds that the location of the Coordinator's Office in the State Department is likely to limit the role of the office because of the many-sided domestic aspects of refugee and asylee policies.

- to develop an effective and responsive liaison between the federal government and voluntary organizations, governors and mayors and others involved in refugee relief and resettlement to reflect overall U.S. policy;
- to make recommendations to the President and to the Congress with respect to policies, objectives and priorities of federal functions relating to refugee admission and resettlement in the United States; and
- to review the regulations, guidelines, requirements, criteria and procedures of federal departments and agencies which are applicable to refugee admission and resettlement in the United States.

The Commission holds that the U.S. Coordinator for Refugee Affairs should be moved from the State Department* to the Executive Office of the President for the following reasons:

- The statutory responsibilities of the Coordinator--to advise the President and coordinate refugee affairs--transcend those of any one department in the executive branch. The Coordinator interacts with dozens of federal agencies and departments, state and local governments, the private sector, the Congress and international agencies and governments. This official is legally responsible for domestic and international refugee affairs and must inform the President on the foreign policy considerations, and the domestic economic and political consequences of all refugee issues that arise.
- Decisions on refugee matters must be supported by the President directly because they represent highly sensitive political issues and often require the use of emergency powers and funds.
- Location in the Executive Office of the President would ensure that the President has full access to the expertise of the Coordinator's Office when making refugee-related decisions, and would also ensure that the Coordinator is kept fully informed of refugee-related matters.
- Such placement would eliminate some of the duplication of work that now takes place, by firmly establishing the Coordinator in his role as advisor to the President and coordinator of refugee affairs.
- Removal of the Coordinator's Office would require no statutory changes as its present placement in the State Department has no basis in statute or regulation.

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*The State Department will still have refugee-related responsibilities. The Bureau of Refugee Programs in the State Department is responsible for the development, implementation and operation of programs and policies for U.S. participation in the relief and resettlement of refugees throughout the world and for the initial resettlement of refugees accepted here.

SECTION VI. NONIMMIGRANT ALIENS

Introduction

Current U.S. law draws a basic distinction between immigrants entering the United States to settle permanently and visitors staying on a temporary basis. The law defines all temporary visitors as "nonimmigrants," and provides a detailed classification system that divides them, by the purpose of their travel, into more than two dozen categories. These categories cover a wide range of purposes from short tourist trips--sometimes lasting only hours near the land borders--to stays of several years for some nonimmigrant employees of international organizations. Table 14 shows each of the nonimmigrant classifications and the number of entries in 1968 and 1978.

Although most nonimmigrants enter as tourists who by law may not work, some are admitted in categories which authorize employment. Many work-authorized nonimmigrants are admitted to take specific jobs with foreign governments or international agencies. Other nonimmigrants may be authorized to work in the U.S. labor market. Some of these foreign workers, such as H-2 temporary workers, are required to stay in specific jobs; a few others have free access to the U.S. labor market.

TABLE 14

TEMPORARY VISITOR CLASSIFICATIONS AND ENTRY DATA, 1968 and 1978

NONIMMIGRANT VISA CATEGORIES AND CLASSIFICATIONS	ENTRIES FISCAL YEAR 1968	ENTRIES FISCAL YEAR 1978*
Foreign government officials⌿ (A)	45,300	83,800
Business travelers (B-1)	257,800	800,000
Tourists (B-2)	2,042,700	6,642,700
Aliens in transit (C)	232,700	273,100
Crewmen(D)	2,086,400	2,728,200
Treaty traders and investors≠(E)	13,100	50,400
Students (F-1)	73,300	187,000
Their spouses and children (F-2)	7,000	19,700
Principal representatives to international organizations≠(G-1)	3,000	6,600
Other officials from recognized foreign governments ≠(G-2)	3,400	7,700
Representatives from other governments≠(G-3)	100	200
Other officers and employees≠(G-4)	12,700	28,600
Servants of above officials (G-5)	600	900
Temporary workers of distinguished merit (H-1)	11,800	16,800
Other temporary workers (H-2)	52,800	22,800
Industrial and other trainees (H-3)	4,600	3,300
Spouses, children of H-1, H-2, H-3§ (H-4)	....	8,300
Foreign press, Radio, TV employees≠(I)	3,600	10,000
Exchange visitors (J-1)	45,300	53,000
Spouses, children of J-1's (J-2)	15,200	21,800
Fiances & Fiancees of U.S. citizens & their children § (K)	....	6,400
Intracompany transferees§ (L-1)	....	21,500
Spouses, children of L-1's§ (L-2)	....	18,500
NATO officials	2,300	5,900
Subtotal	4,913,700	11,017,200
Border crosser categories//		
Canadian border crossers (B-1,B-2)♦	37,605,800	51,699,500
Mexican border crossers (B-1,B-2)♦	82,068,100	103,239,900
TOTAL ENTRIES	124,587,600	165,956,600

SOURCE: INS Annual Reports (numbers rounded off to the nearest 100).

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* In most categories (including border crossers) INS data counts each individual entry separately, thus some individuals are counted more than once.

⌿ Includes spouses, children and servants.

≠ Includes spouses and children.

§ Admitted under the Act of April 7, 1970.

// Persons admitted on a temporary basis without nonimmigrant visas.

♦ Partially estimated.

Control over the entry and stay of nonimmigrants is the responsibility of the Immigration and Naturalization Service. That agency determines how long individual nonimmigrants may stay in the United States and is responsible for locating and taking action on those nonimmigrants who do not depart the United States when they are supposed to or who engage in unauthorized employment or other deportable activities.* Recently, some nonimmigrant activists have aroused public anger because they have participated in group demonstrations--sometimes against the U.S. government. The actions of these nonimmigrant demonstrators have resulted in a call to reevaluate U.S. policy toward what can be considered legitimate nonimmigrant activities.

Despite these instances, Commission research has found that generally positive effects result from the visits of the many millions of foreigners who come to this country each year. Those who come for schooling and professional training contribute new learning and skills to their own countries. Others who come to see friends and relatives take home a better understanding of the United States. And, in turn, the flow of foreign visitors increases U.S. appreciation of the customs, views and ablilities of persons from other countries.

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* These enforcement-related problems have been addressed earlier in Section II.

Foreign visitors also provide an economic benefit to the United States. U.S. Department of Commerce figures show that foreign tourists, business travelers, students and other visitors spent $10 billion here during 1979. These funds directly benefited the U.S. balance of payments and offset most of the $12.5 billion spent during 1979 by U.S. citizens traveling abroad. Further, many foreigners who travel, or are educated or trained in the United States tend subsequently to increase the demand for U.S. goods in their own countries.

Although, in the Commission's view, major revision of nonimmigrant alien policy is not needed at this time, a number of changes in the implementation of that policy would be beneficial. In the recommendations that follow, the Select Commission addresses specific issues within the nonimmigrant categories that provide for foreign students, tourists, business travelers, intracompany transferees, medical personnel and temporary workers.

VI.A. NONIMMIGRANT ADJUSTMENT TO IMMIGRANT STATUS*

THE SELECT COMMISSION RECOMMENDS THAT THE PRESENT SYSTEM UNDER WHICH ELIGIBLE NONIMMIGRANTS AND OTHER ALIENS ARE PERMITTED TO ADJUST THEIR STATUS INTO ALL IMMIGRANT CATEGORIES BE CONTINUED.

Although U.S. immigration law explicitly bars granting nonimmigrant visas to intending immigrants, provisions have been broadened over the years to allow persons temporarily in the United States to adjust to immigrant status without leaving the country, if they are qualified for immigrant visas and if visa numbers (where applicable) are available. Currently, adjustment is available into every immigrant category for all aliens but

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*Commission vote

Should nonimmigrant and illegal aliens be permitted to adjust to permanent resident status in the United States rather than returning home to obtain visas?

Option 1: (9 votes)	Continue the present system which permits adjustments into all immigrant categories.
Option 1A: (1 vote)	(Floor Amendment) Allow all persons qualified for immigrant visas to adjust their status, including those groups not now eligible to do so.
Option 2:	Bar adjustment into any immigrant category.
Option 3: (6 votes)	Allow adjustment into the family but not the independent category.

those who entered the United States without inspection and nonimmigrants who have worked illegally in the United States or who entered as crew members or in transit without visas. Although nonimmigrants adjust their status into all immigrant categories, such adjustments currently account for over half of all admissions in the occupational preferences.

Several Commissioners believe that allowing nonimmigrant adjustment of status encourages intending immigrants to enter the United States fraudulently as nonimmigrants to seek jobs that can gain them eventual immigrant status. Restricting the adjustment of status provisions by prohibiting adjustment into the recommended "other independent immigrants" category, they believe would reduce this circumvention of U.S. immigration law.

The majority of Commission members, however, acknowledge the many benefits of allowing persons to adjust, and remain unconvinced that adjustment of status results in a significant abuse of immigration law. They are of the view that persons already in the United States who are eligible for available immigrant visas should not be penalized by the cost and time required for a trip home to pick up their immigrant visas. They argue further that there are always meritorious cases, and that the absence of a means for relief in such cases will only create pressures on the administrative system and ultimately result in a less satisfactory avenue to achieve the same goal. This has been the case with the current "stateside processing" procedures under which aliens ineligible to adjust are issued immigrant visas in Canada, thus eliminating the need for a long and expensive trip abroad. In view of the above, the Commission recommends continuing the present policy on adjustment of status, which allows all but a specified few groups of persons to adjust to immigrant status--those who entered the United States without inspection and nonimmigrants who have worked illegally in the United States or who entered as crew members or in transit without visas.

VI.B. FOREIGN STUDENTS

U.S. colleges and schools have long played a leading role in educating foreign students. The Commission is of the view that it is in the best interests of the United States to continue offering these educational opportunities to foreign students. However, to improve the administration of the foreign student program, the Commission recommends some changes regarding employment, visa issuance and the responsibility of schools admitting these students.

VI.B.1. Foreign Student Employment*

THE SELECT COMMISSION RECOMMENDS THAT THE UNITED STATES RETAIN CURRENT RESTRICTIONS ON FOREIGN STUDENT EMPLOYMENT, BUT EXPEDITE THE PROCESSING OF WORK AUTHORIZATION REQUESTS; UNAUTHORIZED STUDENT EMPLOYMENT SHOULD BE CONTROLLED THROUGH THE MEASURES RECOMMENDED TO CURTAIL OTHER TYPES OF ILLEGAL EMPLOYMENT.

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*Commission vote

Commissioners voted on a package of proposals that form Recommendations VI.B.1 to VI.D.4. Yes-13; Pass-1; Absent-2.

Federal regulations currently require foreign students to be financially self-sufficient before they may come to the United States to study. In this respect, U.S. policy echoes that of other governments, which do not permit foreign students to work in their countries. However, unlike other governments, if foreign students who are already studying in the United States find that they need to work as a result of unforeseen circumstances or to obtain practical experience or training as part of their course of study, they may request permission to do so.

Although on-campus employment does not require INS approval, in cases where students need to seek off-campus employment, they must first apply to INS for employment authorization. The Immigration and Naturalization Service may authorize part-time, off-campus work during school terms and full-time summer jobs. The majority of foreign students who request permission to work are allowed to do so, but all foreign students are required to maintain full courses of study while working during the school year.

The Commission is of the view that current foreign student employment policy balances two legitimate concerns. It exerts some control over the foreign student impact on local labor markets while it recognizes that certain students have a legitimate need to work. Most Commissioners support this policy and recommend that the existing employment restrictions be retained. On the other hand, a few Commissioners, citing the local labor market impacts of foreign student employment which especially affect teenagers and minority youth, believe that all off-campus employment should be eliminated.* They believe that foreign student employment is especially harmful during the summer when U.S. youth are seeking scarce seasonal employment and that increased foreign student aid programs are a better strategy for helping to defray the increased costs of education than employment authorization.

The Commission also recommends that the processing of student work authorizations be expedited. Present INS procedures regulating student employment are ineffective and inefficient. Processing delays mean that a foreign student is often given work authorization after it is too late to be of use. In addition, at current manpower and funding levels, it is impossible for INS to ensure that a foreign student who has either not requested or who has been denied permission to work is not working without authorization. Although accurate statistics are unavailable, many students are believed to work illegally while pursuing their studies.

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*Commission vote

Vote taken on an amendment proposed by Commissioner Otero--Eliminate off-campus foreign student employment. Yes-3; No-10; Absent-2.

The expedited processing of student work authorization requests which the Commission recommends would eliminate the long delays which now frustrate many foreign students. Timely determinations would be likely to encourage foreign students with meritorious cases to file requests for employment rather than to start working illegally.*

The Select Commission also urges that unauthorized student employment be controlled through the measures recommended to curtail other types of illegal employment (see Section II). In addition, it is of the view that those foreign students who remain illegally in the United States after their studies have been concluded or who abandon their student status once they arrive should be subject to deportation as are other undocumented/illegal aliens.

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*However, if improvement in regulating student employment cannot be made, some Commissioners hold the view that eliminating the current restrictions on foreign student employment should be considered as an alternative to the present situation where decisions are not timely and where the law can be flagrantly abused.

VI.B.2. Employment of Foreign Student Spouses*

THE SELECT COMMISSION RECOMMENDS THAT THE SPOUSES OF FOREIGN STUDENTS BE ELIGIBLE TO REQUEST EMPLOYMENT AUTHORIZATION FROM THE IMMIGRATION AND NATURALIZATION SERVICE UNDER THE SAME CONDITIONS THAT NOW APPLY TO THE SPOUSES OF EXCHANGE VISITORS.

The spouses of foreign nonimmigrant students are not permitted to work in the United States. In contrast, the spouses of exchange visitors may be authorized to work if they need money for their own support, but not for the support of their exchange-visitor spouse.

Currently, about ten percent of the foreign students who come to the United States are accompanied by spouses, and it is unlikely that all of them would qualify and apply for work authorization. A few Commissioners are concerned that the possibility of employment for the spouses of students could serve as an inducement to students to bring their spouses and for these categories to be viewed as a new mechanism for acquiring U.S. jobs. Most

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*Commission vote

Commissioners voted on a package of proposals that form Recommendations VI.B.1. to VI.D.4. Yes-13; Pass-1; Absent-1.

Commissioners, however, are of the view that the labor-market impact of allowing foreign student spouses to request employment authorization under the same restrictions as exchange-visitor spouses is not likely to be great. They believe such a policy would be beneficial to the United States.

VI.B.3. Subdivision of the Foreign Student Category*

THE SELECT COMMISSION RECOMMENDS DIVIDING THE PRESENT ALL-INCLUSIVE F-1 FOREIGN STUDENT CATEGORY INTO SUBCATEGORIES: A REVISED F-1 CLASS FOR FOREIGN STUDENTS AT ACADEMIC INSTITUTIONS THAT HAVE FOREIGN STUDENT PROGRAMS AND HAVE DEMONSTRATED THEIR CAPACITY FOR RESPONSIBLE FOREIGN STUDENT MANAGEMENT TO THE IMMIGRATION AND NATURALIZATION SERVICE; A REVISED F-2 CLASS FOR STUDENTS AT OTHER ACADEMIC INSTITUTIONS AUTHORIZED TO ENROLL FOREIGN STUDENTS THAT HAVE NOT YET DEMONSTRATED THEIR CAPACITY FOR RESPONSIBLE FOREIGN STUDENT MANAGEMENT AND A NEW F-3 CLASS FOR LANGUAGE OR VOCATIONAL STUDENTS. AN ADDITIONAL F-4 CLASS WOULD BE NEEDED FOR THE SPOUSES AND CHILDREN OF FOREIGN STUDENTS.

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*Commission vote

Commissioners voted on a package of proposals that form Recommendations VI.B.1. to VI.D.4. Yes-13; Pass-1; Absent-1.

Under these student classifications recommended by the Commission, some INS responsibilities for a large number of foreign students--those in the new F-1 category--would be delegated to the administrators of schools that have demonstrated a capacity for responsible management of foreign student programs. The Immigration and Naturalization Service would remain fully responsible for monitoring the activities of students in the F-2 and F-3 classes. The Commission is of the view that this division of the present single foreign student category will permit more effective targeting of INS resources and will contribute to better oversight of foreign students enrolled in programs where violations of student status are more likely to be prevalent.

VI.B.4. Authorization of Schools to Enroll Foreign Students*

THE SELECT COMMISSION RECOMMENDS THAT THE RESPONSIBILITY FOR AUTHORIZING SCHOOLS TO ENROLL FOREIGN STUDENTS BE TRANSFERRED FROM THE IMMIGRATION AND NATURALIZATION SERVICE TO THE DEPARTMENT OF EDUCATION.

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*Commission vote

Commissioners voted on a package of proposals that form Recommendations VI.B.1. to VI.D.4. Yes-13; Pass-1; Absent-1.

Currently, INS approves any school for foreign-student enrollment whose academic accreditation is confirmed by the Department of Education. The Commission recognizes that INS can contribute very little to this process and supports transferring the school approval function to the Department of Education, which is better suited to make informed evaluations of the academic character of educational institutions. Under this procedure, INS would still be required to determine the F-1, F-2 or F-3 student status of approved schools (in accordance with Recommendation VI.B.3.).

VI.B.5. Administrative Fines for Delinquent Schools*

THE SELECT COMMISSION RECOMMENDS ESTABLISHING A PROCEDURE THAT WOULD ALLOW THE IMMIGRATION AND NATURALIZATION SERVICE TO IMPOSE ADMINISTRATIVE FINES ON SCHOOLS THAT NEGLECT OR ABUSE THEIR FOREIGN STUDENT RESPONSIBILITIES (FOR EXAMPLE, FAILURE TO INFORM INS OF CHANGES IN THE ENROLLMENT STATUS OF FOREIGN STUDENTS ENROLLED IN THEIR SCHOOLS).

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*Commission vote

Commissioners voted on a package of proposals that form Recommendations VI.B.1. to VI.D.4. Yes-13; Pass-1; Absent-1.

The legal obstacles to revoking a school's foreign-student enrollment authority have proven so difficult to surmount--even for those schools that are flagrantly negligent--that the Commission is of the opinion that INS must have an alternative means of dealing with schools that fail to report student dropouts or other relevant problems. The Service already has authorization to impose administrative fines on airline companies that transport inadmissible travelers to the United States without visas; the Commission believes that agency should be authorized to use this same approach with delinquent schools.

VI.C. TOURISTS AND BUSINESS TRAVELERS*

Foreign tourists and business travelers are numerically the largest and most rapidly increasing categories of temporary visitors. They, therefore, account for a large and ever-growing proportion of the work facing consular officers, and by increasing that work, have reduced the time and attention available for some of the more complex consular workload.

VI.C.1. Visa Waiver for Tourists and Business Travelers from Selected Countries+

THE SELECT COMMISSION RECOMMENDS THAT VISAS BE WAIVED FOR TOURISTS AND BUSINESS TRAVELERS FROM SELECTED COUNTRIES WHO VISIT THE UNITED STATES FOR SHORT PERIODS OF TIME.

The rapid expansion of international travel is imposing a heavy strain on the visa-issuing capacity of many U.S. embassies and consulates around the world. Visitors to the United States from a number of countries rarely abuse the terms of their admission.

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*See Appendix B for Supplemental Statement of Commissioner McClory on this issue.

+Commission vote

Commissioners voted on a package of proposals that form Recommendations VI.B.1. to VI.D.4. Yes-13; Pass-1; Absent-1.

Because visa issuance to such persons has become relatively routine, the Commission recommends adoption of a visa waiver program for nationals of such countries. This waiver of tourist and business traveler visas is consistent with the policies of many other countries which now admit U.S. citizens without visitor visas.

The Commission recognizes the impact a visa waiver program may have on consular and INS workload staffing levels. It supports implementing the visa waiver program on a pilot basis to permit evaluation of its effect on the INS inspections workload. It further supports maintaining the present consular staffing levels, while relieving some of the pressure generated by the demand for tourist and business traveler visas. A visa waiver program should, as a side benefit, improve the overall quality of the more difficult consular decisions for which less time has been available because of the rapid increases in demand for tourist and business traveler visas.

VI.C.2. Improvement in the Processing of Intracompany Transferee Cases*

THE SELECT COMMISSION RECOMMENDS THAT U.S. CONSULAR OFFICERS BE AUTHORIZED TO APPROVE THE PETITIONS REQUIRED FOR INTRACOMPANY TRANSFERS.

Currently, petitions for intracompany transferees can be adjudicated only by the Immigration and Naturalization Service. Even though nearly all of these petitions are approved, processing delays often mean that weeks, sometimes months, pass before a petition is finally adjudicated. In many of these cases, the consuls who eventually will issue the intracompany transferee visas are familiar with the companies involved and are thus in a position to adjudicate the petitions immediately when the applicants apply for their visas. The Commission is of the view that authorizing consular approval of intracompany transferee petitions would save time for the petitioner, the transferee and the government. In those instances where consular officers have no knowledge of the companies involved, they would be required to refer the cases to INS for adjudication.

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*Commission vote

Commissioners voted on a package of proposals that form Recommendations VI.B.1. to VI.D.4. Yes-13; Pass-1; Absent-1.

VI.D. MEDICAL PERSONNEL

The United States has contributed extensively to the training of medical personnel from many countries. Between 1967 and 1978 more than 47,000 foreign doctors entered the United States as nonimmigrant exchange visitors with contracts to serve in internship and residency training positions in U.S. hospitals. Over 20,000 foreign nurses also entered the country during that period. Not only have these medical personnel played an important role in providing health care to U.S. citizens, but at the same time, the United States has been able to advance world health care through its training programs for foreign medical personnel.

VI.D.1. Elimination of the Training Time Limit for Foreign Medical School Graduates*

THE SELECT COMMISSION RECOMMENDS THE ELIMINATION OF THE PRESENT TWO- TO THREE-YEAR LIMIT ON THE RESIDENCY TRAINING OF FOREIGN DOCTORS.

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*Commission vote

Commissioners voted on a package of proposals that form Recommendations VI.B.1. to VI.D.4. Yes-13; Pass-1; Absent-1.

The current two- to three-year limit on training prevents foreign doctors from completing the four to six or more years of residency required in most medical specialties, thus effectively ruling out the United States as a place to pursue such training.

Commission research found that many doctors from Latin America, as well as other areas, who formerly sought to train here, are going elsewhere for their residencies, especially to Eastern Europe and the Soviet Union. The present time limit on training was imposed in 1976 because of the belief that doctors who trained in the United States for more than three years tended to adjust their status rather than return home to practice medicine. In that year, however, federal regulations that facilitated the adjustment of status for doctors were eliminated, thus making the training time limit unnecessary as well as undesirable. The Commission, therefore, recommends eliminating the current limit on training to enable foreign doctors to complete their full training in this country.

VI.D.2. Revision of the Visa Qualifying Exam for Foreign Doctors*

THE SELECT COMMISSION RECOMMENDS THAT THE VISA QUALIFYING EXAM BE REVISED TO DEEMPHASIZE THE SIGNIFICANCE OF THE EXAM'S PART I ON BASIC BIOLOGICAL SCIENCE.

To ensure that foreign doctors coming to the United States are competent practitioners, the Visa Qualifying Exam (VQE) was designed in 1977 to screen foreign doctors as rigorously as the U.S. National Board of Medical Examiners' test screens U.S. medical school graduates. The U.S. National Board test for U.S. graduates has two parts--one on basic science, generally taken at the end of the second year of medical school when the material is fresh in the minds of medical students, and the other on medical science, generally taken at the end of the fourth year of medical school. The VQE has this same division of subjects. Many foreign doctors pass Part II, which is relevant to their professional work as doctors, yet fail Part I because they cannot remember enough of the details of the basic science they studied early in their medical training. A number of U.S. doctors have conceded that few U.S. physicians could pass Part I of the VQE as currently structured. The Select Commission therefore recommends that less significance be placed on Part I (Basic Biological Science) of the Visa Qualifying Exam in determining the eligibility of foreign doctors to enter the United States.

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*Commission vote

Commissioners voted on a package of proposals that form Recommendations VI.B.1. to VI.D.4. Yes-13; Pass-1; Absent-1.

VI.D.3. Admission of Foreign Nurses as Temporary Workers*

THE SELECT COMMISSION RECOMMENDS THAT QUALIFIED FOREIGN NURSES CONTINUE TO BE ADMITTED AS TEMPORARY WORKERS, BUT ALSO RECOMMENDS THAT EFFORTS BE INTENSIFIED TO INDUCE MORE U.S. NURSES WHO ARE NOT CURRENTLY PRACTICING THEIR PROFESSIONS TO DO SO.

The Commission concludes that the continuing shortage of practicing nurses in the United States justifies the admission of foreign nurses while that shortage continues, but urges that efforts be intensified to make nursing a more attractive career to induce more inactive U.S. nurses to return to that profession.

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*Commission vote

Commissioners voted on a package of proposals that form Recommendations VI.B.1. to VI.D.4. Yes-13; Pass-1; Absent-1.

VI.D.4. Screening of Foreign Nurses Applying for Visas*

THE SELECT COMMISSION RECOMMENDS THAT ALL FOREIGN NURSES WHO APPLY FOR U.S. VISAS CONTINUE TO BE REQUIRED TO PASS THE EXAM OF THE COMMISSION ON GRADUATES OF FOREIGN NURSING SCHOOLS.

The recently introduced examination of the Commission on Graduates of Foreign Nursing Schools (CGFNS) appears to ensure that foreign nurses seeking to enter the United States are qualified. This prescreening of foreign-trained nurses is needed because, in the past, too many unscreened nonimmigrant nurses, once admitted to the United States, were unable to pass required state-level nursing exams and thus lost their status as nonimmigrant nurses. Many foreign nurses also had difficulty with the new CGFNS exam when it was first introduced in 1978. However, now more than a third of the applicants pass, and close to 75 percent of those who do are able to pass state nursing exams as well. The Select Commission is of the view that the present exam serves a useful purpose in screening for entry those foreign nurses who are most likely to be able to successfully maintain their status as nonimmigrant nurses once in the United States. It, therefore, recommends the continuation of the current screening of foreign nurse visa applicants.

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*Commission vote

Commissioners voted on a package of proposals that form Recommendations VI.B.1. to VI.D.4. Yes-13; Pass-1; Absent-1.

VI.E. H-2 TEMPORARY WORKERS*

THE DEPARTMENT OF LABOR SHOULD RECOMMEND CHANGES IN THE H-2 PROGRAM WHICH WOULD IMPROVE THE FAIRNESS OF THE PROGRAM TO BOTH U.S. WORKERS AND EMPLOYERS. PROPOSED CHANGES SHOULD:

- IMPROVE THE TIMELINESS OF DECISIONS REGARDING THE ADMISSION OF H-2 WORKERS BY STREAMLINING THE APPLICATION PROCESS;
- REMOVE THE CURRENT ECONOMIC DISINCENTIVES TO HIRE U.S. WORKERS BY REQUIRING, FOR EXAMPLE, EMPLOYERS TO PAY FICA AND UNEMPLOYMENT INSURANCE FOR H-2 WORKERS; AND MAINTAIN THE LABOR CERTIFICATION BY THE U.S. DEPARTMENT OF LABOR.
- THE COMMISSION BELIEVES THAT GOVERNMENT, EMPLOYERS AND UNIONS SHOULD COOPERATE TO END THE DEPENDENCE OF ANY INDUSTRY ON A CONSTANT SUPPLY OF H-2 WORKERS.

THE ABOVE DOES NOT EXCLUDE A SLIGHT EXPANSION OF THE PROGRAM.

The United States has long had a limited program through which temporary workers can enter the country as H-2 nonimmigrants. Petitions for these workers are reviewed by the Department of Labor which must certify that U.S. workers are not available and that the employment of aliens will not adversely affect the wages and working conditions of other similarly employed U.S.

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* Commission vote

Yes-14; No-2.

See Appendix B for Supplemental Statements of Commissioners Kennedy, Ochi, Otero and Reynoso.

workers. From 1973 to 1976, H-2 admissions averaged a little more than 30,000 workers annually, 12,000 of whom were agricultural workers. In 1977 and 1978 the number of H-2 workers dropped below this level to 28,000 and 23,000, respectively.

The H-2 program has been criticized from all sides:

- By U.S. labor representatives and others for its inadequate protection of U.S. wages and for permitting a "wage wedge" that encourages the hiring of H-2 workers over U.S. citizens or permanent residents. Once given permission to hire H-2 workers, the employer need not pay social security and unemployment insurance for the temporary migrants.
- By employers who find the procedures for determining eligibility to hire H-2 workers time-consuming and subject to delay. Employers have argued that these delays are unnecessary and that the program fails to meet their labor needs.
- By foreign workers because they do not receive the same benefits as U.S. workers.

Despite the inadequacies many people find with regard to the H-2 program, the Commission finds that a continuation of the program is necessary and preferable to the institution of a new one (see Section II). Recognizing the seriousness of some of these inadequacies, however, the Commission recommends that changes be made in the current H-2 program to make it more responsive to the needs of employers and more protective of the rights of U.S. workers. These recommended changes attempt to balance two legitimate needs--that of U.S. employers for a source of needed labor and that of U.S. workers for labor market protection.

They are also designed to extend to temporary workers the employment benefits normally given to U.S. workers and thus to be more protective of their rights. The Commission further believes that any slight expansion in the number of temporary workers admitted should be within the existing H-2 program.

Streamlining the Application Process

The Select Commission urges the Department of Labor to recommend changes in the H-2 program to streamline the application process and improve the timeliness of decisions, thus making the program more responsive to the needs of U.S. employers. The Commission is of the view that these changes are necessary in order to avoid administrative delays and to decrease the costs and paperwork of the certification process.

Protecting U.S. Labor

The Select Commission urges that the Department of Labor recommend changes in the present H-2 program to make it more protective of the rights of U.S. workers by removing the inducements to hire H-2 workers over U.S. workers.

The Commission specifically recommends that:

- Employers be required to pay FICA and unemployment insurance for H-2 workers;
- The requirement for labor certification for H-2 workers be maintained by the Department of Labor; and
- Employers, unions and government cooperate to end the dependence of any industry on a constant supply of H-2 workers.

These steps will eliminate some of the present advantages that stem from hiring foreign rather than U.S. workers. Under these recommendations, employers also will be encouraged to seek U.S. labor and end their dependence on H-2 workers.

Protecting H-2 Workers

The Commisson recommendation requiring employers to extend the same benefits now given U.S. workers to foreign workers in the H-2 program also would be more protective of H-2 workers. The Commission is of the view that changes in the H-2 program should address the concerns of those who fear that a temporary worker program will automatically result in an underclass of workers. By guaranteeing H-2 workers the same benefits as U.S. workers, the United States can ensure that its temporary worker program does not degenerate, as did the bracero program, into a program that exploits workers.

VI.F. AUTHORITY OF THE ATTORNEY GENERAL TO DEPORT NONIMMIGRANTS*

THE SELECT COMMISSION RECOMMENDS THAT GREATER STATUTORY AUTHORITY BE GIVEN TO THE ATTORNEY GENERAL TO INSTITUTE DEPORTATION PROCEEDINGS AGAINST NONIMMIGRANT ALIENS WHEN THERE IS CONVICTION FOR AN OFFENSE SUBJECT TO SENTENCING OF SIX MONTHS OR MORE.

In recent months disturbances by Iranian nonimmigrants have pointed out to many the inadequacy of U.S. deportation laws regarding temporary visitors who abuse the privilege of being in this country. Although the Commission recognizes that the majority of nonimmigrants are law-abiding visitors, it is of the opinion that this nation must have ample authority to deport those nonimmigrant aliens who abuse the privilege of being in this country.

The present authority of the Attorney General for deporting aliens involved in criminal conduct requires conviction of a crime that is subject to sentencing of one year or more. The

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*Commission vote

Yes-11; Pass-2; Absent-2

See Appendix B for Supplemental Statement of Commissioner Ochi.

Select Commission believes that the current provision provides too narrow an authority for the deportation of nonimmigrants. Therefore, it recommends that the minimum period of sentencing required for the institution of deportation hearings against nonimmigrants be reduced from one year to six months.

SECTION VII. ADMINISTRATIVE ISSUES

Introduction

The agencies administering U.S. immigration and nationality laws, especially the Immigration and Naturalization Service (Department of Justice), are among the most beleaguered agencies in the federal government. The Select Commission has heard, along with some praise, a broad range of complaints about the INS and other agencies with immigration-related responsibilities, primarily the Visa Office and Consular Service of the Department of State.

The Commission recognizes that its recommendations for a new and better law must be implemented and administered effectively, efficiently and professionally. Although the Commission understands that many of the current problems facing INS and the Consular Service are attributable to ambiguities and inconsistencies present in the Immigration and Nationality Act itself, it acknowledges that the recommendations it has made for improving the law cannot by themselves successfully ameliorate the problems. Changes must also be made within the agencies to address specific structural, management and attitudinal problems.

VII.A. FEDERAL AGENCY STRUCTURE*

THE SELECT COMMISSION RECOMMENDS THAT THE PRESENT FEDERAL AGENCY STRUCTURE FOR ADMINISTERING U.S. IMMIGRATION AND NATIONALITY LAWS BE RETAINED WITH VISA ISSUANCE AND THE ATTENDANT POLICY AND REGULATORY MECHANISMS IN THE DEPARTMENT OF STATE AND DOMESTIC OPERATIONS AND THE ATTENDANT POLICY AND REGULATORY MECHANISMS IN THE IMMIGRATION AND NATURALIZATION SERVICE OF THE DEPARTMENT OF JUSTICE.

Over time, as needs have grown or changed, responsibility for administering immigration laws has been placed wherever appropriate systems already existed or where, at the time, it seemed most logical. As a result, eight cabinet departments now have immigration-related responsibilities (see Appendix E, Role of the Federal Government in Immigration and Refugee Policy). A study of the specific nature of the immigration responsibilities of the Immigration and Naturalization Service in the Department of Justice, the Consular Service and Visa Office in the Department of State, the Labor Certification Division in the Department of Labor, the Public Health Service in the Department of Health and Human Services, the U.S. Travel Service in the

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*Commission vote

Yes-10; No-3; Absent-2.

Department of Commerce, the Internal Revenue and Customs Services in the Department of the Treasury, the Plant and Animal Quarantine Service in the Department of Agriculture and the Coast Guard in the Department of Transportation has led the Select Commission to the conclusion that in all but the Departments of Justice and State, immigration responsibilities are relatively minor but integrally tied to broader agency mandates. The efficiency and effectiveness of overall immigration law administration would not be enhanced by removing these agencies or their immigration related functions from their parent departments.

Historically, attention has been given to the major, shared immigration responsibilities of the Departments of Justice and State. Periodically, recommendations have been made to transfer the visa issuance function from the Department of State to the Immigration and Naturalization Service in the Department of Justice, or to an independent agency which would house both the overseas and domestic immigration functions now assigned to the two departments. It has been argued that such a consolidation would alleviate the problems of occasional inconsistency and lack of coordination in policy formulation and implementation between the Departments of Justice and State.

The Commission has studied the advantages and disadvantages of the single immigration agency option, either within the Department of Justice or as an independent agency, and concludes that, at this time, the current division of responsibility between the Departments of Justice and State should be maintained. Continuing visa issuance in the Department of State and domestic operations in the Department of Justice recognizes major departmental jurisdictions and expertise in foreign and domestic policy. Further, it avoids the costs of new personnel and resource requirements, and the major personnel and operational disruptions which result from reorganization.

Several Commissioners, however, while acknowledging that the current organization may be preferable at this time, support the concept of a single agency with both foreign and domestic immigration responsibilities. They believe efficiency, effectiveness and the status of immigration policy would be significantly enhanced by such a reorganization.

Other Commissioners support transferring the immigrant--but not the nonimmigrant--visa function from the Department of State to the Immigration and Naturalization Service.* This option, they believe, would require less additional overseas personnel than would an independent agency and would not remove the more foreign policy-oriented nonimmigrant visa issuance function from the Department of State. Further, by such a reorganization, they believe interpretation of the law on immigrant admissions would be more uniform.

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*Commission vote

Vote taken on an amendment proposed by Commissioner Ochi--Transfer immigrant visa issuance from State to INS. Yes-4; No-9; Absent-2.

VII.B. IMMIGRATION AND NATURALIZATION SERVICE*

The inadequacies of the Immigration and Naturalization Service have regularly been the subject of public criticism, including testimony before the Select Commission, site visits, letters to the Commission, and series of reports in leading U.S. newspapers. Many of these inadequacies can be attributed to the low priority given INS within the federal structure and an unclear mission with insufficient resources for performing that mission. Historical circumstances within the agency also have established negative attitudes and practices, both in terms of management and operations.

The Commission acknowledges that most INS employees are conscientious and hard-working, and capable of handling their duties effectively. Nevertheless, the Commission believes that, along with an improved immigration policy, a series of initiatives directed specifically at the agency's organization and the professionalism of its employees will greatly improve the Immigration and Naturalization Service.

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*See Appendix B for Supplemental Statement by Commissioner Ochi on this issue.

VII.B.1. Service and Enforcement Functions*

THE SELECT COMMISSION RECOMMENDS THAT ALL MAJOR DOMESTIC IMMIGRATION AND NATIONALITY OPERATIONS BE RETAINED WITHIN THE IMMIGRATION AND NATURALIZATION SERVICE, WITH CLEAR BUDGETARY AND ORGANIZATIONAL SEPARATION OF SERVICE AND ENFORCEMENT FUNCTIONS.

The Immigration and Naturalization Service is currently responsible for most domestic operations which concern immigration and citizenship. These operations cover a wide range of activities, from providing benefits concerning aliens to apprehending and deporting alien criminals. The Commission, during the course of its work, has heard many persons argue that one agency should not have such a broad spectrum of responsibilities because service and enforcement operations are inherently contradictory.

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*Commission vote

Yes-14; Absent-1.

The Commission has investigated the possibility of dividing present INS operations into two separate agencies, one with service-related responsibilities and the other solely concerned with law enforcement functions. It has also evaluated previous attempts to reorganize INS functions into interior and border agencies that would have consolidated INS border activities with similar border operations in other federal agencies, primarily the U.S. Customs Service's patrolling and inspections functions.

Based on its analysis of both service-enforcement and interior-border splits, the Select Commission concludes that the administration of U.S. immigration policy would not be made more efficient or effective by either type of reorganization. INS service and enforcement operations have elements of both orientations and are linked logically and physically by law and administrative support systems. Actions taken concerning an alien in one INS operation may result in eligibility for or denial of a subsequent action in another. Separating service and enforcement or interior and border functions into different agencies would be likely to increase inconsistency, duplication and delay rather than improve the administration of U.S. immigration and nationality laws.

The Commission does believe, however, that service and enforcement functions should be separated within INS to the greatest extent possible. Separate administrators already supervise service- and enforcement-related operations, and the Commission finds that separate budgets for service and enforcement-related functions would be desirable as well. This recommendation for the separation of budget items, however, refers to separate budget allocations within a single INS appropriation, not separate budget appropriations for service and enforcement functions. The common administrative support systems underlying all INS operations and the lack of management flexibility which would result from separate service and enforcement appropriations argue against this approach.

VII.B.2. Head of the INS*

THE SELECT COMMISSION RECOMMENDS THAT THE HEAD OF THE IMMIGRATION AND NATURALIZATION SERVICE BE UPGRADED TO DIRECTOR AT A LEVEL SIMILAR TO THAT OF THE OTHER MAJOR AGENCIES WITHIN THE DEPARTMENT OF JUSTICE AND REPORT DIRECTLY TO THE ATTORNEY GENERAL ON MATTERS OF POLICY.

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*Commission vote

Yes-14; Absent-1.

The Select Commission believes that the credibility and prestige of the Immigration and Naturalization Service, as well as the top-level attention and concern given immigration policy, can be increased by upgrading the position of INS Commissioner to Director, at a level comparable to other Department of Justice bureau heads. Additionally, as a means of improving communication between INS and the Department of Justice, the Commission supports reducing the administrative layers between the INS Director and the Attorney General. It, therefore, recommends that the Director report directly to the Attorney General rather than to the Associate Attorney General on policy matters, as is the case with the Director of the Federal Bureau of Investigation.

VII.B.3. Professionalism of INS Employees*

THE SELECT COMMISSION RECOMMENDS THE FOLLOWING ACTIONS BE TAKEN TO IMPROVE THE RESPONSIVENESS AND SENSITIVITY OF IMMIGRATION AND NATURALIZATION SERVICE EMPLOYEES:

- ESTABLISH A CODE OF ETHICS AND BEHAVIOR FOR ALL INS EMPLOYEES
- UPGRADE EMPLOYEE TRAINING TO INCLUDE MEANINGFUL COURSES AT THE ENTRY AND JOURNEYMEN LEVELS ON ETHNIC STUDIES AND THE HISTORY AND BENEFITS OF IMMIGRATION.

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*Commission vote

Yes-14; Absent-1.

- PROMOTE THE RECRUITMENT OF NEW EMPLOYEES WITH FOREIGN LANGUAGE CAPABILITIES[*] AND THE ACQUISITION OF FOREIGN LANGUAGE SKILLS IN ADDITION TO SPANISH--IN WHICH ALL OFFICERS ARE NOW EXTENSIVELY TRAINED--FOR EXISTING PERSONNEL.
- SENSITIZE EMPLOYEES TO THE PERSPECTIVES AND NEEDS OF THE PERSONS WITH WHOM THEY COME IN CONTACT AND ENCOURAGE INS MANAGEMENT TO BE MORE SENSITIVE TO EMPLOYEE MORALE BY IMPROVING PAY SCALES AND OTHER CONDITIONS OF EMPLOYMENT.[†]
- REWARD MERITORIOUS SERVICE AND SENSITIVITY IN CONDUCT OF WORK.
- CONTINUE VIGOROUS INVESTIGATION OF AND ACTION AGAINST ALL SERIOUS ALLEGATIONS OF MISFEASANCE, MALFEASANCE AND CORRUPTION BY INS EMPLOYEES.
- GIVE OFFICERS TRAINING TO DEAL WITH VIOLENCE AND THREATS OF VIOLENCE.
- STRENGTHEN AND FORMALIZE THE EXISTING MECHANISM FOR REVIEWING ADMINISTRATIVE COMPLAINTS, THUS PERMITTING THE IMMIGRATION AND NATURALIZATION SERVICE TO BECOME MORE AWARE OF AND RESPONSIVE TO THE PUBLIC IT SERVES.
- MAKE SPECIAL EFFORTS TO RECRUIT AND HIRE MINORITY AND WOMEN APPLICANTS.

Although realizing that most INS employees are both responsible and capable, the Select Commission believes that improvements must be made in response to the complaints generated about some INS employees. These complaints centered on insensitivity to aliens seeking benefits from INS and the verbal and occasional physical abuse of aliens who were being temporarily detained, interrogated or arrested by INS enforcement personnel.

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[*] Ochi Amendment - Add wording "the recruitment of new employees with foreign language capabilities." Approved by unanimous consent.

[†] Otero Amendment - Add wording "encourage INS management to be more sensitive to employee morale by improving pay scales and other conditions of employment." Passed by unanimous voice vote.

The Commission is of the view that the specific actions listed above, coupled with other recommendations for a clearer and more easily administered immigration policy, will significantly improve the professionalism of and respect for the Immigration and Naturalization Service, and its ability to effectively and efficiently administer U.S. immigration and nationality laws.

VII.C. STRUCTURE FOR IMMIGRATION HEARINGS AND APPEALS*

Forty immigration judges in the Immigration and Naturalization Service currently hear and decide approximately 56,000 deportation and 3,000 exclusion cases annually. Some persons appear before immigration judges individually, while others, in certain uncontested cases, appear in groups.

Any deportation or exclusion order issued by an immigration judge can be reviewed at the request of either the alien or INS before the five-member Board of Immigration Appeals (BIA). This Board is a quasi-judicial appellate entity, created by regulation, that operates within the Department of Justice, but outside the Immigration and Naturalization Service. Determinations by the Board of Immigration Appeals generally represent the final administrative step in the process of exclusion or deportation, although on rare occasions a case may be reviewed by the Attorney General as a result of a referral process which can be initiated by the government but not by the alien. An alien may seek review of a BIA exclusion decision by habeas corpus in a U.S. District Court (with subsequent appellate review in the U.S. Court of Appeals) and of a BIA deportation decision by direct appeal to a U.S. Court of Appeals. Of approximately 2,000 deportation cases decided annually by the Board, roughly 10 percent undergo judicial review.

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*See Appendix B for Supplemental Statements by Commissioners Holtzman, McClory and Ochi on this issue.

Select Commission research has found the following weaknesses in the hearing and review process in exclusion and deportation cases:

- INS does not provide adequate support service to immigration judges, contributing to long delays in the administrative adjudication process;
- Immigration judges are administratively dependent upon officials (INS district directors) who are involved in an adversary capacity in proceedings before the judges;
- The present vulnerability of the Board of Immigration Appeals to possible executive intervention (because of the Board's placement in the Department of Justice and lack of statutory standing) detracts from its stature and undermines the appearance of independent decision making;
- The grade levels of immigration judges (GS-15) and members of the Board of Immigration Appeals (GS-15, with a GS-16 chairman) are not commensurate with the nature of the responsibilities these officials discharge, a factor that serves as a deterrent to the recruitment of highly qualified lawyers to fill these important roles;*

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*GS-16 is the grade of administrative law judges in most federal agencies. Members of the U.S. Parole Commission, who are roughly comparable to the Board of Immigration Appeals members, occupy positions at the GS-18 level.

- The present institutional structures, in both deportation and exclusion cases, make available a process of judicial review following a quasi-judicial hearing and appeal to the BIA. These structures unreasonably and unnecessarily prolong the execution of exclusion and deportation orders; and

- The present combination of quasi-judicial and judicial appellate structures promotes doubt and confusion in the development of immigration law and encourages relitigation in new cases of issues that have already been decided.

VII.C.1. Article I Court*

THE SELECT COMMISSION RECOMMENDS THAT EXISTING LAW BE AMENDED TO CREATE AN IMMIGRATION COURT UNDER ARTICLE I OF THE U.S. CONSTITUTION.

The Select Commission is convinced of the need for a more equitable and efficient method of processing exclusion and deportation cases. Some Commissioners believe that the answer lies in the creation of a U.S. Immigration Board, with statutory independence from INS and the Attorney General, subject to the requirements of the Administrative Procedures Act. Such a mechanism, these Commission members argue, would also be an ideal body for adjudicating noncriminal actions taken against employers under an employer sanctions system.

A majority of Commissioners, however, is of the view that such a solution would still suffer from many of the current administrative inadequacies. The institution of an Immigration Court under Article I of the U.S. Constitution, they believe, would result in more efficient and uniform processing of cases.[†]

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*Commission vote

Yes-8; No-4; Pass-1; Absent-2.

[†] Congress, in creating an Article I Court, can provide flexible rules of procedure. For example, Congress can specify that (a) nonlawyers may be admitted to represent aliens in proceedings, and (b) the new court will not be bound by the Federal Rules of Evidence.

The Article I court offers an advantage over a quasi-judicial system because it provides one hearing and one appellate review in place of the layering of review that characterizes the present system. The Immigration Court recommended by the Commission will include a trial division to hear and decide exclusion and deportation cases and an appellate division to correct hearing errors and permit definitive, nationally binding resolutions of exclusion and deportation cases.* The new court also offers the potential for introducing judicial uniformity into the review of denials of applications and petitions--matters that now occupy the attention of district courts around the country. The elimination of potential disparate rulings by courts of appeals should discourage further litigation.

The Commission majority is also of the view that an Article I Immigration Court is more likely to attract outstanding adjudicators. Improvements in the caliber of personnel will enhance the quality of decisions and generally eliminate any need for further review. Some Commissioners believe that if the Article I Court cannot be instituted for several years, interim measures should be taken to improve the competency of the existing INS immigration judges. At a minimum, they believe that the judges should receive additional training, have their positions upgraded and follow procedures identical with those set forth in the Administrative Procedures Act.

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*The remedy of Supreme Court review by petition for certiorari would remain available for the rare immigration case of great national importance; review of immigration decisions by U.S. Courts of Appeals would be eliminated.

VII.C.2. Resources for Article I Court*

THE SELECT COMMISSION URGES THAT THE COURT BE PROVIDED WITH THE NECESSARY SUPPORT TO REDUCE EXISTING BACKLOGS.

All delays in the current exclusion and deportation process are not caused by the existing adjudicatory process. It frequently takes an inordinate period of time to prepare the transcript of a deportation hearing when an appeal is taken to the Board of Immigration Appeals. This delay is caused not by structural problems in the existing hearing system but rather by a lack of INS clerical resources devoted to the hearings process.

To eliminate this type of administrative delay, which harms the exclusion and deportation process, the Commission recommends that the new court be provided with a sufficient number of clerical personnel and other resources to reduce existing backlogs and allow the expeditious processing of the court's new caseload.

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*Commission vote

Yes-8; No-4; Pass-1; Absent-2.

VII.D. ADMINISTRATIVE NATURALIZATION*

THE SELECT COMMISSION RECOMMENDS THAT NATURALIZATION BE MADE AN ADMINISTRATIVE PROCESS WITHIN THE IMMIGRATION AND NATURALIZATION SERVICE WITH JUDICIAL NATURALIZATION PERMITTED WHEN PRACTICAL AND REQUESTED. IT FURTHER RECOMMENDS THAT THE SIGNIFICANCE AND MEANING OF THE PROCESS BE PRESERVED BY RETAINING MEANINGFUL GROUP CEREMONIES AS THE FORUM FOR THE ACTUAL CONFERRING OF CITIZENSHIP.

Select Commission research has found that the naturalization process--currently divided between the Immigration and Naturalization Service and the judicial system--is duplicative, costly and time-consuming for petitioners, the INS and overburdened judges. The Commission's analysis of the naturalization process has also shown a lack of uniformity in decisions made among the hundreds of naturalization court jurisdictions.

An INS naturalization examiner now recommends that an applicant's petition to the court for naturalization be granted or denied, and it is rare that a judge does not follow this recommendation. Nevertheless, naturalization requires an appearance before a federal judge. This court procedure, because of scheduling difficulties, often adds unnecessary weeks or even months to the naturalization process.

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*Commission vote

Yes-14; Absent-1.

As a result of its research, the Select Commission has concluded that INS naturalization examiners should be authorized to assume what is currently a judicial responsibility and grant or deny citizenship. To the extent possible, however, the Commission believes it is desirable to preserve the significance of the naturalization process by retaining meaningful group ceremonies as the forum for actually conferring citizenship.

Despite this support of administrative naturalization, the Commission recognizes the dignity often added to the naturalization ceremony by the courtroom procedure and the deep satisfaction that the naturalization process gives some immigrants and judges. It, therefore, does not wish to bar judicial naturalization as an alternative where local courts believe they can efficiently continue the courtroom hearing and ceremony. Thus, while recommending administrative naturalization within the Immigration and Naturalization Service, the Commission leaves open the possibility of judicial naturalization in those cases where the petitioner, INS and the courts find it to be a desirable and efficient alternative.

VII.E. REVIEW OF CONSULAR DECISIONS*

THE SELECT COMMISSION RECOMMENDS THAT THE EXISTING INFORMAL REVIEW SYSTEM FOR CONSULAR DECISIONS BE CONTINUED BUT IMPROVED BY ENHANCING THE CONSULAR POST REVIEW MECHANISM AND USING THE STATE DEPARTMENT'S VISA CASE REVIEW AND FIELD SUPPORT PROCESS AS TOOLS TO ENSURE EQUITY AND CONSISTENCY IN CONSULAR DECISIONS.

The process of immigrant and nonimmigrant visa issuance and denial traditionally has been exempted from formal review, giving the consular officer absolute authority over decisions on visa applications. Excepting these consular decisions from appellate review has long been criticized on the grounds that while aliens abroad are not, as a matter of law, entitled to constitutional due process, they should receive a formal review of denials of their visa applications because review of a denial of an important benefit is so much a part of the American system of justice. In analyzing this issue, the Commission has reviewed the existing visa denial process, the adequacy of current informal review procedures and alternative appellate review systems which could be instituted.

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*Commission vote

Yes-11; No-3; Absent-1.

See Appendix B for Supplemental Statement of Commissioner Ochi on this issue.

The right to a fair consideration is now explicitly stated in the Department of State's visa regulations, and applicants under the current policy are to be given every reasonable opportunity to establish their eligibility for visas. Since the visa issuance process is not now formally reviewable either within the Department of State or in U.S. courts, the Bureau of Consular Affairs maintains an informal review process under which all visa refusals, whether contested or not, must be reviewed by a second officer. This reviewing officer may issue the visa when in disagreement with the first officer and when the first officer cannot be convinced to grant it. If a denial stands, a consular officer, the applicant or a U.S. petitioner may obtain further review by requesting an advisory opinion from the Visa Office in Washington, D.C. The Visa Office, though, only can bind a consular officer to its opinion on a matter of law and not on the application of law to the facts of a particular case. However, instances where the advice of the Visa Office is refused are rare, and other disciplinary actions can be and are taken by the Department of State in appropriate cases.

After evaluating the existing review process and alternative systems--including a formal appellate review mechanism within the Department of State, an Immigration Court and the existing U.S. courts--the majority of the Commission has concluded that certain administrative improvements should be made within the existing informal review system to create an effective review process. Such improvements could include improving the current system through improved documentation on the reasons for visa denials and increased review of field office operations and practices where there are frequent complaints or apparent departures from established policy. The majority of Commissioners hold the view that these changes should remove many of the inequities which now exist in the visa issuance process and make decisions more consistent with each other and with law and regulation, without creating the expense of a new appellate body. A few Commissioners, however, remain unconvinced that an informal review system will be sufficient to provide a consistently proper review of visa denials and call for the establishment of a formal and independent review mechanism within the Department of State for this purpose.

VII.F. Immigration Law Enforcement by State and Local Police[*]

THE SELECT COMMISSION RECOMMENDS THAT STATE AND LOCAL LAW ENFORCEMENT OFFICIALS BE PROHIBITED FROM APPREHENDING PERSONS ON IMMIGRATION CHARGES, BUT FURTHER RECOMMENDS THAT LOCAL OFFICIALS CONTINUE TO BE ENCOURAGED TO NOTIFY THE IMMIGRATION AND NATURALIZATION SERVICE WHEN THEY SUSPECT A PERSON WHO HAS BEEN ARRESTED FOR A VIOLATION UNRELATED TO IMMIGRATION TO BE AN UNDOCUMENTED/ILLEGAL ALIEN.

Because of the relatively small number of INS Border Patrol officers and investigators available to detect undocumented/illegal entrants, INS has at times unofficially encouraged state and local law enforcement officers to assist in locating and apprehending undocumented/illegal aliens. These officers, though not legally authorized to apprehend persons on immigration charges except in alien-smuggling cases,[†] are authorized under specific guidelines to report to INS suspected undocumented/illegal aliens apprehended on charges not related to immigration violations, and in fact are encouraged to do so. The Commission has heard of many instances, however, when these guidelines have not been followed and state and local law enforcement officers have detained suspected undocumented/illegal aliens when there was no substantive violation of local law.

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[*] Commission vote

Yes-13; No-1; Absent-1.

[†] State law in California and Illinois empowers local law enforcement officials to enforce federal laws, thus giving them technical authorization to enforce immigration laws.

The Select Commission holds the view that the complexity of immigration law, when coupled with the lack of training of state and local law enforcement personnel in this area, is likely to result in continuing civil rights violations against U.S. citizens and aliens legally in the United States. Further, attempts to enforce immigration laws are likely to alienate local police from segments of the communities they serve, to the detriment of effective local law enforcement. Therefore, the Commission supports the position that state and local law enforcement officers should be prohibited from apprehending persons on immigration charges, except in alien-smuggling cases. In situations, however, where a person is arrested for a violation unrelated to immigration (but is not a victim of or a witness to such a crime), and is suspected of being an undocumented/illegal alien, the Commission believes that state and local law enforcement officers should be encouraged to notify INS, which may then make further inquiry into the immigration status of the individual.

SECTION VIII: LEGAL ISSUES

Introduction

The Select Commission's mandate specifically directs it to conduct a comprehensive review of the provisions of the Immigration and Nationality Act and make legislative recommendations to simplify and clarify such provisions. During its public hearings and consultations and through research, the Commission has learned of many deficiencies in the Act. Its complexity, inconsistency, archaic language and out-of-date provisions have been criticized by lawyers, scholars, immigration officials and members of the public. Four major issues have been brought to the Commission's attention repeatedly and are introduced here for special consideration: the powers of INS officers, the right of aliens to legal counsel, limits on the deportation of aliens, and the grounds for excluding aliens and permanent resident aliens from the United States.*

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*Other legal issues are addressed in the revision of specific sections of the INA drafted by the Commission's legal staff, to be submitted to the Congress before May 1, 1981.

VIII.A. POWERS OF IMMIGRATION AND NATURALIZATION SERVICE OFFICERS*

The Immigration and Nationality Act (INA) by its silence allows great latitude to INS officers to arrest, interrogate and search. As a result, the courts have been called upon frequently to define the appropriateness of INS enforcement activities, which take place without statutory support from the INA. Since the INA was passed in 1952, the U.S. Supreme Court and various lower federal courts have frequently issued opinions limiting INS enforcement practices in order to bring them within the purview of the Fourth Amendment. The net result has been a judicial curtailing of INS enforcement activities, which has caused great frustration among INS officers charged with the responsibility of apprehending undocumented/illegal migrants. In addition to these judicial guidelines, the Immigration and Naturalization Service has issued its own guidelines in the form of published regulations and operating instructions, and unpublished policy directives to INS personnel. These guidelines, however, are not found in current immigration statutes.

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*See Appendix B for Supplemental Statement of Commissioner Ochi on this issue.

The Select Commission holds the view that INS officers should have the authority to interrogate, arrest and search. Further, it is of the opinion that this authority should be mandated by statute, not by court ruling or agency regulation, if there is to be uniform national practice and if frequent judicial intervention in INS enforcement practices is to be avoided.

VIII.A.1. Temporary Detention for Interrogation*

THE SELECT COMMISSION RECOMMENDS THAT STATUTES AUTHORIZING IMMIGRATION AND NATURALIZATION SERVICE ENFORCEMENT ACTIVITIES FOR OTHER THAN ACTIVITIES ON THE BORDER CLEARLY PROVIDE THAT IMMIGRATION AND NATURALIZATION SERVICE OFFICERS MAY TEMPORARILY DETAIN A PERSON FOR INTERROGATION OR A BRIEF INVESTIGATION UPON REASONABLE CAUSE TO BELIEVE (BASED UPON ARTICULABLE FACTS) THAT THE PERSON IS UNLAWFULLY PRESENT IN THE UNITED STATES.

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*Commission vote

The Select Commission voted on a package of proposals which form Recommendations VIII.A.1. to VIII.A.3. Yes-14; Absent-1.

It is often necessary for INS agents to detain persons temporarily, short of arrest, for the purpose of questioning. Brief investigatory detention, aside from permitting more extensive interrogation, also permits the examination of any identifying documents which a person may present, the determination (through radio contact) of whether an INS record exists for the person detained and, ultimately, the determination of whether sufficient cause exists to justify an arrest.

Current provisions in the INA fail to define the authority of INS officers to temporarily detain persons for the purpose of questioning or pursuing investigatory leads. The resulting inconsistent policy and practice regarding detentions have created tensions in the communities which INS targets for enforcement activity. These inconsistencies have also invited judicial intervention in the form of injunctions against INS and have made the agency vulnerable to civil suits for damages.

The courts have generally required--in keeping with Fourth Amendment standards--that INS officers have a reasonable belief (based upon articulable facts) that the persons custodially detained are unlawfully present in the United States.* The Select Commission believes that this language should be incorporated into the statutes authorizing INS enforcement activities, with the exception of enforcement activities along the border.

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*The Supreme Court has specifically softened this standard in allowing INS officers to stop vehicles for a brief time and question their occupants at fixed checkpoints on highways in reasonable proximity to an international border, even without a suspicion of any impropriety. In making its determination, the Supreme Court recognized the sovereign authority of the nation to protect its borders.

VIII.A.2. Arrests With and Without Warrants*

THE SELECT COMMISSION RECOMMENDS THAT:

- ARRESTS, EFFECTED WITH OR WITHOUT THE AUTHORITY OF A WARRANT, SHOULD BE SUPPORTED BY PROBABLE CAUSE TO BELIEVE THAT THE PERSON ARRESTED IS AN ALIEN UNLAWFULLY PRESENT IN THE UNITED STATES.
- WARRANTLESS ARRESTS SHOULD ONLY BE MADE WHEN AN INS OFFICER REASONABLY BELIEVES THAT THE PERSON IS LIKELY TO FLEE BEFORE AN ARREST WARRANT CAN BE OBTAINED.
- ARREST WARRANTS MAY BE ISSUED BY THE IMMIGRATION AND NATURALIZATION SERVICE DISTRICT DIRECTORS OR DEPUTY DISTRICT DIRECTORS, THE HEADS OF SUBOFFICES AND ASSISTANT DISTRICT DIRECTORS FOR INVESTIGATIONS ACTING FOR THE ATTORNEY GENERAL.
- PERSONS ARRESTED OUTSIDE THE BORDER AREA WITHOUT A WARRANT SHOULD BE TAKEN WITHOUT UNNECESSARY DELAY BEFORE THE IMMIGRATION AND NATURALIZATION SERVICE DISTRICT DIRECTOR, DEPUTY DISTRICT DIRECTOR, HEAD OF A SUBOFFICE OR ASSISTANT DIRECTOR FOR INVESTIGATIONS ACTING FOR THE ATTORNEY GENERAL OR BEFORE AN IMMIGRATION JUDGE WHO WILL DETERMINE IF SUFFICIENT EVIDENCE EXISTS TO SUPPORT THE INITIATION OF DEPORTATION PROCEEDINGS. WITH RESPECT TO ARRESTS AT THE BORDER, PERSONS ARRESTED WITHOUT A WARRANT SHOULD BE TAKEN WITHOUT UNNECESSARY DELAY BEFORE AN IMMIGRATION JUDGE OR A SUPERVISORY, RESPONSIBLE IMMIGRATION AND NATURALIZATION SERVICE OFFICIAL WHO WILL DETERMINE WHETHER SUFFICIENT EVIDENCE EXISTS TO SUPPORT THE INITIATION OF DEPORTATION PROCEEDINGS.

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*Commission vote

The Select Commission voted on a package of proposals which form Recommendations VIII.A.1. to VIII.A.3. Yes-14; Absent-1.

With or without a warrant, the Select Commission believes that arrests by INS officers should be based on a uniform standard, known to all enforcement officers and formulated in a manner consistent with the Fourth Amendment. The U.S. courts have held consistently that arrests must be based upon a probable cause to believe that the person arrested is an alien unlawfully present in the country and the Select Commission believes that similar language should be incorporated into the INA.

Existing statutes already allow persons pending a determination of deportability to be arrested with a warrant (Section 242[a] of the INA). The Select Commission urges that statutory language be drafted to allow a warrant of arrest to be issued by INS District Directors or Deputy District Directors, the heads of suboffices and Assistant District Directors for Investigations acting for the Attorney General. In those cases, however, when there is reason to believe that an alien to be arrested is in the United States in violation of the Immigration and Nationality Act, and is likely to escape before a warrant can be secured, the Select Commission recommends that an INS officer be able to arrest the alien without a warrant. Warrantless arrest is currently allowed by INS regulation under these circumstances. The Commission supports the addition of similar language to the existing statutes which now deal only with the arrest of individuals with a warrant.

Under current INS regulations, a person arrested without a warrant must be examined by an INS officer other than the arresting officer to determine if there is prima facie evidence that indicates the matter should proceed to a deportation hearing. In order to provide some form of added protection to the arrested individual and to avoid unnecessary detention at taxpayer expense, the Select Commission believes that the law should require a person so arrested outside the border area to be taken without unnecessary delay before an INS District Director, Deputy District Director, head of a suboffice, or Assistant Director for Investigations or before an Immigration Judge who will determine if sufficient evidence exists to support the initiation of deportation proceedings. With respect to arrests at the border, the Commission recommends that persons arrested without a warrant be taken without unnecessary delay before an Immigration Judge or an INS official in a supervisory capacity who will determine whether sufficient evidence exists to support the initiation of deportation proceedings.

VIII.A.3. Searches for Persons and Evidence*

THE SELECT COMMISSION RECOMMENDS THAT THE IMMIGRATION AND NATIONALITY ACT INCLUDE PROVISIONS AUTHORIZING IMMIGRATION AND NATURALIZATION SERVICE OFFICERS TO CONDUCT SEARCHES:

- WITH PROBABLE CAUSE EITHER UNDER THE AUTHORITY OF JUDICIAL WARRANTS FOR PROPERTY AND PERSONS, OR IN EXIGENT CIRCUMSTANCES;
- UPON THE RECEIPT OF VOLUNTARY CONSENT AT PLACES OTHER THAN RESIDENCES;
- WHEN SEARCHES PURSUANT TO APPLICABLE LAW ARE CONDUCTED INCIDENT TO A LAWFUL ARREST; OR
- AT THE BORDER.

Existing law is silent on the authority of INS officers to conduct searches, except those conducted at the border. Although the Immigration Service has issued its own guidelines, there are no statutory standards that set forth when an INS officer may search a person, home or place of business. This absence of statutory guidelines has led to lack of uniform enforcement practices and to accusations of Fourth Amendment abuse by both citizens and permanent resident aliens.

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*Commission vote

The Select Commision voted on a package of proposals which form Recommendations VIII.A.1. to VIII.A.3. Yes-14; Absent-1.

The Supreme Court has held that INS officers are bound by the dictates of the Fourth Amendment; various lower courts have issued decisions requiring INS to obtain judicial warrants prior to conducting involuntary searches of persons, homes or businesses. In other cases, INS has entered into agreements, (not required by judicial decision) which require judicial warrants to be obtained before searches without consent are conducted.

To establish continuing, uniform procedures, the Select Commission recommends statutory guidelines in which INS officers will be authorized to:

- Conduct searches of persons and property where they have probable cause and the authority of judicial warrants;
- Conduct searches of persons and property without judicial warrants when they have probable cause, and the circumstances are exigent;
- Conduct searches at places other than residences when there is voluntary consent;
- Conduct searches of persons incident to lawful arrest; and
- Conduct searches at the border.

VIII.A.4. Evidence Illegally Obtained*

THE SELECT COMMISSION RECOMMENDS THAT ENFORCEMENT OFFICIALS USING ILLEGAL MEANS TO OBTAIN EVIDENCE SHOULD BE PENALIZED. THE EVIDENCE THUS OBTAINED SHOULD NOT BE EXCLUDED FROM CONSIDERATION IN DEPORTATION CASES.

The Select Commission has considered extending the exclusionary rules governing illegally obtained evidence in criminal proceedings to the field of immigration. Several Commissioners support the extension of Fourth Amendment and federal court interpretations of these rules to immigration cases, believing that illegally obtained evidence should be excluded from consideration in immigration cases.

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*Commission vote

Should evidence illegally obtained be excluded in deportation cases?

Option 1: (10 votes)	Enforcement officials using illegal means to obtain evidence should be penalized. The evidence thus obtained should not be excluded from consideration in deportation cases.
Option 2: (3 votes)	Provide by statute that court decisions relating to the admissibility in federal criminal cases of evidence illegally obtained shall apply to deportation proceedings.
Absent (2 votes)	

A majority of the Commissioners, however, believe that such an extension would intrude on the expeditious processing of deportation proceedings, to the detriment of effective law enforcement. Instead, they urge that disciplinary action be taken against immigration officials who use illegal means to obtain evidence, rather than excluding that evidence from consideration in deportation cases. Although certain Commissioners find administrative penalties insufficient since they influence only prospective behavior and provide no relief to an individual in a deportation hearing, a majority of Commissioners believe that administrative penalties--without slowing the deportation process--should provide an effective deterrent to obtaining evidence illegally in deportation cases. Penalties would be consistent with other disciplinary provisions of the Department of Justice and their severity dependent upon whether the act of illegally obtaining the evidence was intentional, reckless or simply negligent.*

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*Current internal Department of Justice penalties for violations of search and seizure law are as follows: Individuals found to have intentionally violated search and seizure law are subject to the highest administrative penalties available; those guilty of reckless disregard of standard procedures are subject to administrative penalties less stringent than those assessed for intentional violations; and in those cases where officers are guilty of acts of negligence or omission, administrative discipline may not always be appropriate, but where it is that discipline is to be applied.

VIII.B. RIGHT TO COUNSEL[*]

VIII.B.1. The Right to Counsel and Notification of that Right[†]

THE SELECT COMMISSION RECOMMENDS THAT THE RIGHT TO COUNSEL AND NOTIFICATION OF THAT RIGHT BE MANDATED AT THE TIME OF EXCLUSION AND DEPORTATION HEARINGS AND WHEN PETITIONS FOR BENEFITS UNDER THE INA ARE ADJUDICATED.[‡]

The Select Commission has found confusion surrounding the issue of notification and right to counsel. While existing provisions in the INA limit the right to counsel to exclusion and deportation proceedings, the exact boundaries of this right have been obscured by various successful judicial challenges. Further confusion is created as a result of the current law's silence concerning the point at which persons should be advised of their right to counsel.

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[*] See Appendix B for Supplemental Statement of Commissioner Muskie on this issue.

[†] Commission votes

Should the right to counsel and a notification of that right, at least, be allowed at the time of exclusion and deportation hearings and adjudication hearings? Yes-12; No-1; Absent-2.

Should the right to counsel and a notification of that right be extended to any time after arrest or temporary detention? Yes-7; No-6; Pass-1; Absent-1.

[‡] Discussion of the right to counsel was limited to benefits adjudicated by INS and did not include the Consular Service of the State Department.

Recognizing the limitations of the current law, the Immigration Service has from time to time published regulations and issued policy statements concerning the point at which persons should be entitled to the assistance of counsel. Nevertheless, the lack of clear statutory language (other than that which provides for counsel at exclusion and deportation hearings) has resulted in different practices being followed by local INS offices. The Select Commission recommends, therefore, that the right to counsel be statutorily mandated not only in exclusion and deportation hearings but when petitions for benefits under the INA are adjudicated. The Commission holds the view that the presence of legal counsel will benefit and facilitate the administrative process at hearings and in interviews before immigration officers. It further recommends that persons should be advised of their right to counsel at the time that right becomes available to them.

As part of its discussion of the right to counsel, the Select Commission has also considered recommending that the right to counsel be mandated at any time after temporary detention or arrest but has not reached a consensus on this issue. A number of Commissioners believe that this right must be mandated clearly at the time of temporary detention before individuals agree to voluntary return instead of facing deportation proceedings.

These Commission members argue that challenges based on the lack of access to counsel now lead to delays and confusion, resulting in judicial interference in the administrative process. They believe that mandating the right to counsel at the time of temporary detention or arrest will decrease this judicial interference and aid in the efficient presentation of evidence and legal arguments.

Other Commissioners, however, believe that the extension is unnecessary because INS, as a matter of policy, already advises persons of their right to counsel at the time of arrest. (Even in cases in which undocumented/illegal aliens voluntarily depart the United States to avoid formal proceedings, they have first been informed that they have a right to consult a lawyer and a separate right to request a hearing.) These Commission members, because of the great numbers of persons involved in the enforcement process, are wary of turning current policy into statute. They are concerned that recommending a statutory extension of the right to counsel may carry with it the Sixth Amendment right to government payment of counsel where the right to counsel is mandated. Other Commission members do not believe this would be the case. They argue that, though there is now often a right to counsel in administrative hearings, the right to paid counsel is allowed only in rare cases.

VIII.B.2. Counsel at Government Expense*

THE SELECT COMMISSION RECOMMENDS AMENDING THE CURRENT LAW TO PROVIDE COUNSEL AT GOVERNMENT EXPENSE ONLY TO LEGAL PERMANENT RESIDENT ALIENS IN DEPORTATION OR EXCLUSION HEARINGS, AND ONLY WHEN THOSE ALIENS CANNOT AFFORD LEGAL COUNSEL AND ALTERNATIVE SOURCES OF FREE LEGAL SERVICES ARE NOT AVAILABLE.†

The Select Commission holds the view that providing counsel at government expense to lawful permanent resident aliens in deportation or exclusion hearings, when they cannot afford legal counsel and free legal services are not available, would ensure that all lawful permanent resident aliens receive a fair hearing. It would decrease the possibility that a permanent resident might be mistakenly deported because equities in the United States were not fully presented at the deportation hearing. Further, such action would eliminate potential legal challenges to deportation orders from permanent residents who were not represented by counsel because they could not afford that counsel and because free legal services were unavailable.

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*Commission vote

Should the current law be amended to provide counsel at government expense only to lawful permanent residents in deportation or exclusion hearings and only when aliens cannot afford legal services and when there are no free services for legal services? Yes-12; No-2; Absent-1.

†This recommendation does not refer to any of the current programs of the Legal Services Corporation.

In fiscal year 1978, 70,410 aliens were formally deported or required to depart by INS (excluding almost one million escorted voluntary returns across land borders). Of this number, 819 were lawful permanent resident aliens who had engaged in some form of misconduct subsequent to lawful entry into the United States. No statistics are maintained on how many, if any, of the 819 permanent resident aliens who departed in fiscal year 1978 could not afford legal counsel and could not locate available free legal services. Nevertheless, even if half of the 819 permanent residents deported in 1978 were indigent and had no access to free legal services, which was certainly not the case, the Commission holds the view that this number and future numbers of permanent residents likely to be deported are too small to impose a great additional burden on the system.

VIII.C. LIMITS ON DEPORTATION*

The Select Commission, in public hearings and consultations, has heard arguments that deportation should be removed as a punishment for long-term permanent resident aliens who commit deportable offenses, except in cases of heinous crimes such as murder, persecution, rape, child abuse, kidnapping or espionage. Deportation is generally a much more severe penalty for long-term residents of the United States and their families than for recently arrived permanent residents or aliens here temporarily as nonimmigrants. With certain exceptions, U.S. law currently makes no allowance for a long period of U.S. residence in determining whether an action renders an alien deportable. Actions committed by both long-term and new permanent residents, as well as nonimmigrants here on temporary visas, are treated in the same manner.

Discretionary relief--through the existing suspension of deportation provision in Section 244 of the INA--is currently available to certain aliens who commit deportable acts. Suspension of deportation is open to aliens with continuous physical presence in the United States of either seven or ten years, depending on the basis for deportation. In addition, an alien must have good moral character throughout the seven- or ten-year period and deportation must cause either "extreme hardship" (in cases involving certain grounds for deportation) or "exceptional and extremely unusual hardships" (in cases involving other grounds) to that alien or certain relatives.

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*See Appendix B for Supplemental Statement of Commissioner Simpson on this issue.

VIII.C.1. Revision of Section 244 of the Immigration and Nationality Act*

THE SELECT COMMISSION RECOMMENDS THAT THE WORDS "EXTREME HARDSHIP" IN SECTION 244 OF THE IMMIGRATION AND NATIONALITY ACT BE CHANGED TO "HARDSHIP." AND THAT THE REFERENCE TO CONGRESSIONAL CONFIRMATION OF SUSPENSION OF DEPORTATION BE ELIMINATED FROM THIS SECTION.

The Select Commission has found the suspension of deportation process too cumbersome to be a realistic vehicle for administrative relief. In recommending that the words "extreme hardship" be changed to "hardship" and that the reference to congressional confirmation be eliminated from Section 244 of the Act, it seeks to streamline this process without dismantling the present system for deporting persons who have committed serious offenses or who are serious risks to the United States. While a number of Commission members do not believe that congressional confirmation should be eliminated from Section 244 or that the Commission should address this issue, the majority of Commissioners view the elimination of this requirement as necessary if the suspension of deportation process is to be responsive to those qualified permanent residents facing deportation.

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* Commission vote

Should the words "extreme hardship" in Section 244 of INA be changed to "hardship?" Yes-11; No-1; Pass-1; Absent-2.

Should the reference to congressional confirmation be eliminated? Yes-9; No-4; Absent-2.

VIII.C.2. Long-term Permanent Residence as a Bar to Deportation.*

The Commission has also considered but could not reach a consensus on whether long-term, lawful permanent residence should be a bar to deportation. Some Commissioners believe that the present

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* Commission vote

Should long-term, lawful permanent residence in the United States be a bar to the deportation of permanent resident aliens, except in the case of aliens who commit certain serious crimes?

Option 1: (3 votes)	Retain present policy.
Option 2: (5 votes)	Bar institution of deportation proceedings against long-term permanent resident alliens who have committed deportable offenses (except in cases where heinous crimes are committed); bar the institution of deportation proceedings against permanent resident aliens who are under the age of 18 and have committed deportable offenses (except in cases where heinous crimes have been committed), regardless of the length of residence in the United States. Pass (5 votes)
Pass (5 votes)	
Absent (2 votes)	

policy, under which the grounds for deportation are generally applied to all aliens regardless of status and length of stay, should be retained. These Commission members argue that long-term permanent resident aliens can become U.S. citizens through naturalization and by that action remove any threat of deportation. They view the status of permanent resident alien as a privilege, and find suspension of deportation a more appropriate way to deal with long-term permanent residents facing deportation, especially if a permanent resident is required to prove only hardship--not extreme hardship--as the result of that deportation. (See Recommendation VIII.C.1.)

Other Commission members, however, would bar the institution of deportation proceedings against long-term (perhaps seven to ten years) permanent resident aliens who have committed deportable offenses or crimes, except in cases of heinous crimes. Further, they would bar the institution of deportation proceedings against permanent resident aliens who are under the age of 18 and have committed deportable offenses (except in cases where heinous crimes have been committed), regardless of the length of residence in the United States. These Commission members believe that permanent residents under 18 years of age who are generally ineligible for naturalization and may not be in a position to derive U.S. citizenship from their parents (if their parents do not wish or cannot qualify for naturalization) should not be penalized because they are unable to avoid deportation on the basis of U.S. citizenship. Comissioners holding this point of view argue that permanent resident aliens and their families suffer undue hardship as a result of deportation when other penalties would be more appropriate to the crime committed. They believe the suspension of deportation process, even if less stringent, will still be cumbersome and expensive.

Still other Commissioners support the concept of a statute of limitations with regard to the initiation of deportation proceedings against lawful permanent residents. These members of the Select Commission hold the opinion that the government should take action against an individual within a certain specified period of time following the commission of a deportable offense, or not at all. If after a set number of years, the government has not begun deportation proceedings, these Commissioners believe that the permanent resident who committed the deportable offense should no longer be subject to deportation as a result of that act.

VIII.D. EXCLUSIONS[*]

VIII.D.1. Grounds for Exclusion[/-]

THE SELECT COMMISSION BELIEVES THAT THE PRESENT EXCLUSIONARY GROUNDS SHOULD NOT BE RETAINED. IT RECOMMENDS THAT CONGRESS REEXAMINE THE GROUNDS FOR EXCLUSION SET FORTH IN THE INA.

A national policy of restricting immigration on qualitative grounds was inaugurated in 1875 with a statute which barred convicts and prostitutes from entering the United States. Existing law contains 33 grounds for the exclusion of immigrants and nonimmigrants alike. Those to be excluded from the United States include, among others, persons who are "likely at any time to become public charges," who are "afflicted with psychopathic personality, or sexual deviation, or a mental defect," who are "convicted of crime involving moral turpitude . . . or who admit having committed such a crime . . . ."

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[*] See Appendix B for Supplemental Statements of Commissioners Hesburgh, Holtzman, Kennedy, Ochi and Simpson on this issue.

[/-] Commission votes

Should the present grounds of exclusion be retained? Yes-3; No-13.

Should Congress reexamine the grounds for exclusion presently set forth in the INA? Yes-13; Absent-2.

Following Commission study and discussion of these exclusionary grounds, a majority of Commissioners do not believe that all of the 33 grounds should be retained. A number of Commissioners find many of the present grounds for exclusion archaic. Others believe that such language as "mental defect" or "sexual deviation" is too vague for consistent, equitable interpretation and cite instances of different interpretations by the INS and the Visa Office of the Department of State.

Given what is at stake in the issuance or denial of immigrant and, in many instances, nonimmigrant visas, the Select Commission urges that the grounds for exclusion be reexamined by the Congress to determine whether they are in the public interest and to provide for consistent and equitable exclusion determinations.

VIII.D.2. Reentry Doctrine*

THE SELECT COMMISSION RECOMMENDS THAT THE REENTRY DOCTRINE BE MODIFIED SO THAT RETURNING LAWFUL PERMANENT RESIDENT ALIENS (THOSE WHO HAVE DEPARTED FROM THE UNITED STATES FOR TEMPORARY PURPOSES) CAN REENTER THE UNITED STATES WITHOUT BEING SUBJECT TO THE EXCLUSION LAWS, EXCEPT THE FOLLOWING:

- CRIMINAL GROUNDS FOR EXCLUSION (CRIMINAL CONVICTIONS WHILE ABROAD);
- POLITICAL GROUNDS FOR EXCLUSION;
- ENTRY INTO THE UNITED STATES WITHOUT INSPECTION; AND
- ENGAGING IN PERSECUTION.

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*Commission vote

Should lawful permanent residents be subject to all of the grounds of exclusion upon their return from temporary visits abroad?

Option 1: Make no change in current law.

Option 2: (3 votes) Make no change in the existing law but suggest standards to interpret the Supreme Court's exception to the reentry doctrine which states that an "innocent, casual, and brief" trip abroad does not meaningfully interrupt one's residence in the United States and should not be regarded as a separate entry in the case of permanent resident aliens.

Option 3: (2 votes) Eliminate the reentry doctrine entirely.

Under existing law, a returning lawful permanent resident alien undergoes an immigration inspection at a port of entry after each trip abroad to determine whether any of the 33 grounds for exclusion should bar his/her reentry into the United States. Witnesses before the Select Commission have criticized the imposition of this reentry doctrine on permanent resident aliens and have cited the harsh consequences which sometimes result when a permanent resident is refused reentry into the United States.

While the Supreme Court has stated that persons who take an innocent, casual and brief trip out of the country should not be considered to be making an entry upon return and that the exclusion laws should not be applied to these aliens, it did not define what was meant by a brief and innocent trip. Therefore, lower courts now decide this on an individual case-by-case basis.

Option 4: (8 votes) Modify the reentry doctrine so that returning permanent resident aliens (i.e., those who have departed from the United States for temporary purposes) could reenter the U.S. without being subject to the exclusion laws except the following:

a. Criminal grounds for exclusion (criminal convictions while abroad);
b. Political grounds for exclusion;
c. Entry into the U.S. without inspection; and
d. Engaging in persecution.

Absent (2 votes)

The Select Commission has been convinced by the testimony on the need for amendment in this area. It has noted the cases of hardship created by the varying interpretations given to the reentry doctrine. For example, elderly Asian aliens who have gone abroad to visit their families have been delayed on reentry because they were receiving social security supplemental benefits in the United States, as they were clearly entitled to do.

Several Commissioners believe the problem can be solved with the clarification of the Supreme Court's definition and would amend current law only to include a detailed statutory definition of what constitutes innocent, casual and brief trips abroad. A majority of the Commission's members, however, support the modification of the reentry doctrine itself. Such modification, they find, would eliminate the harsh effects of the reentry doctrine on permanent residents who travel abroad temporarily while retaining the viability of the doctrine where it serves the national interest--exclusion based on criminal or political grounds, entry into the United States without inspection and persecution. In addition, the Commission holds the view that this modification will substantially reduce litigation and appeals and conserve INS resources.

SECTION IX. LANGUAGE REQUIREMENT FOR NATURALIZATION*

THE SELECT COMMISSION RECOMMENDS THAT THE CURRENT ENGLISH-LANGUAGE REQUIREMENT FOR NATURALIZATION BE RETAINED, BUT ALSO RECOMMENDS THAT THE ENGLISH-LANGUAGE REQUIREMENT BE MODIFIED TO PROVIDE A FLEXIBLE FORMULA THAT WOULD PERMIT OLDER PERSONS WITH MANY YEARS OF PERMANENT RESIDENCE IN THE UNITED STATES TO OBTAIN CITIZENSHIP WITHOUT READING, WRITING OR SPEAKING ENGLISH.

A knowledge of the English language has been a requirement of naturalization since 1906. Section 312 of the Immigration and Nationality Act states that a petitioner for naturalization must demonstrate an understanding of the English language, including an ability to read, write and speak words in ordinary usage.* There is no standard test of English-language ability. The examination conducted during the preliminary hearing is tailored to the individual applicant, and the examiner is encouraged to be flexible and to take into account the individual's personal background--for example, age and education. The applicant is also required to read and write a simple English sentence, such as, "I am going to the store." and to sign his/her name in English. Currently exempted from this requirement are persons who are physically unable to comply or who are over fifty years old on the date of filing their naturalization petitions and have lived in the United States for periods totaling at least 20 years following admission for permanent residency.

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*Commission Vote

Should the current English-language requirement for naturalization be changed?

Option 1 - Eliminate the English-language requirement.
(2 votes)

Option 2 - Retain the English-language requirement.
(2 votes)

Option 3 - Retain the English-language requirement, but further
(9 votes) modify it for older persons.

Absent
(2 votes)

See Appendix B for Supplemental Statements of Commissioners Ochi and Reynoso on this issue.

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*Section 312 of the Immigration and Nationality Act also requires "a knowledge and understanding of the fundamentals of the history, and of the principles and form of government, of the United States." The examination is conducted in simple language and avoids technical or extremely difficult questions. The petitioner must respond in English to questions about his/her personal history and on U.S. history, U.S. government and the Constitution. Petitioners are asked such questions as: What are the three branches of government? How long are the terms of a U.S. senator and member of Congress? The Commission makes no recommendations regarding changes in the history/government requirement.

In the earliest days of the republic, many believed, as Noah Webster noted, that "a national language is a bond of national union." The English language, in the view of most Commissioners, remains a unifying thread of U.S. life. English-language proficiency is important for full participation as a citizen. The ability of all U.S. citizens to understand their laws, institutions and methods of government, and to communicate their views to others, including elected representatives, is a prerequisite for responsible citizenship. English-language proficiency is also important for full participation in the U.S. marketplace.

Research examined by the Commission has found consistent correlations between English-language ability and socioeconomic achievement. In one study, which analyzed the relationship between English-language proficiency and the labor-market participation of Indochinese refugees, researchers found that of those who said they did not understand English at all, 11.7 percent were unemployed and only 2.6 percent earned more than $200 a week. However, of those people who reported that they spoke English well, only 2.7 percent were unemployed while more than 48 percent earned over $200 a week.

In recognition of the civic and economic importance of English-language proficiency, the Select Commission recommends that the English-language requirement for naturalization be retained. It is not the Commission's view, however, that this affirmation of the English-language requirement puts it in opposition to linguistic diversity. The Commission in no way wishes to downgrade the importance of ethnic languages and traditions, nor does it wish to deprive the United States of second- and third-language resources. Further, it recognizes that many native-born citizens do not speak English. Instead, this recommendation for retention of the English-language requirement affirms the Commission's view that English is an important, if not an indispensable, tool for fully effective participation in the U.S. political and economic systems.

While the Commission recommends retention of the English-language requirement, it also recommends that the law be modified to permit greater flexibility in granting citizenship to older persons, regardless of their English-language ability. The Commission supports this change because research has found that older persons often have difficulty learning a second language. Further, many of these persons do not have the compelling need to speak English that younger immigrants may have. They are less likely to be in the labor market and dependent on the English language in their daily jobs. These individuals should not be denied the privilege of citizenship because of their lack of proficiency in English if they are able to qualify otherwise. Under the current law's 50/20 formula (at least 50 years old with 20 years of permanent residence), an individual who comes to the United States at the age of 70 has to wait until the age of 90 to naturalize if he/she does not speak English. Under a flexible formula for naturalization, a petitioner (with a minimum age determined by Congress) whose age and years of permanent residency in the United States total more than a specific number and who meets the other requirements for naturalization, could be eligible for citizenship without meeting the English-language requirement. For example, if Congress were to set the required age/residency combination at 65, the following age/residency requirements are among those which would exempt such persons: 50/15, 55/10, 60/5.

SECTION X. TREATMENT OF U.S. TERRITORIES UNDER U.S. IMMIGRATION AND NATIONALITY LAWS*

THE SELECT COMMISSION RECOMMENDS THAT U.S. LAW PERMIT, BUT NOT REQUIRE, SPECIAL TREATMENT OF ALL U.S. TERRITORIES

The U.S. territories of the Virgin Islands, Guam, the Northern Marianas, American Samoa and the Commonwealth of Puerto Rico are unique because of geography, population size and ethnicity, economic base, political development and degree of partnership in the federal system. This uniqueness has been reflected in their treatment under the Immigration and Nationality Act:

- Puerto Rico, the Virgin Islands and Guam are fully covered by the Immigration and Nationality Act (INA), which defines them as part of the geographic United States and as states; their citizens are U.S. citizens.

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*Commission Vote

How should the territories be treated under the Immigration and Nationality Act?

Option 1: (1 vote)	Continue the present governmental situation: Puerto Rico, the Virgin Islands and Guam are fully covered by the INA; American Samoa and the Northern Mariana Islands are given special treatment.
Option 2: (11 votes)	Permit, but not require special treatment of all the territories.
Pass (1 vote)	
Absent (2 votes)	

- A covenant with the Northern Marianas regarding commonwealth status explicitly limits application of the INA to matters of citizenship and visa petitions for the immediate relatives of U.S. citizens, giving the Northern Marianas full control over nonimmigrants and other aspects of immigration. As trusteeship is terminated and commonwealth status achieved, however, Congress has the power to modify this covenant and will be free to extend all or other parts of the INA to the Northern Marianas.
- American Samoa is defined specially under the INA as an "outlying possession of the United States" whose citizens are U.S. nationals. It has a separate immigration code, issued by the Secretary of the Interior, which controls the admission and activities of of U.S. citizens and aliens alike.

One of the Select Commission's explicit responsibilities under Public Law 95-412 has been to conduct a study and analysis of whether and to what extent the Immigration and Nationality Act should apply to U.S. territories. During the course of special consultations on this matter, representatives of the Northern Marianas and American Samoa strongly urged continuing the special treatment for these territories. Representatives of Guam and the Virgin Islands have also testified that they believe that special treatment of their islands is justified in some instances. Although representatives of Puerto Rico have expressed no immediate dissatisfaction with their coverage under the INA, some experts have testified that the commonwealth may require special measures in the future.

Staff analysis shows that special treatment is indicated for at least four of the territories.

American Samoa

To bring American Samoa fully under the INA would take a major effort involving abrogation, renegotiation or judicial invalidation of treaties. Since these islands were ceded to the United States, this country has been supportive of American Samoa's attempt to retain its culture, patterns and lifestyle. Essential to this effort has been the island's special status that has permitted control of the immigration of both U.S. citizens and aliens into the islands. America Samoa has a population of only 30,000 and it could easily be overwhelmed by immigration.

Northern Mariana Islands

A special commission is presently meeting and will be issuing recommendations on the applicability of the federal laws to the Northern Marianas. While the full application of the INA to the Northern Marianas may occur once commonwealth status is achieved, any large-scale immigration that might result from such application would be likely to have an adverse effect on land distribution. The islands' population is only 17,000 and land is held under arrangements essential to the maintenance of the culture of the islands.

Guam

The INA may have hindered Guamanian economic growth and fair participation in the East Asian economic area. Eighty-five percent of all tourists who go to Guam are Japanese and the visa requirement has created some frustration, leading Delegate Antonio Won Pat to introduce a Guam-specific visa waiver bill. Impediments to obtaining visas facing Hong Kong residents, especially those originally from mainland China, have stymied the development of a tourist trade that could double tourism in Guam and reduce reliance on Japanese investment. The INA limitations on tourism, which may be appropriate for the continental United States, make little sense when applied to an island 9,000 miles from Washington, D.C. Even foreign fishing crewmen have been prevented from coming ashore, including those from the Trust Territories.

On the other hand, Guam has been inundated with nonimmigrants, most of whom are temporary workers. Aliens make up 31.5 percent of the employed work force; 60 percent of the construction work force is composed of foreign workers. From 1952 to 1977 Guam's Department of Labor certified temporary workers under the INA through delegation of responsibility from the Attorney General. That authority was transferred to the U.S. Department of Labor after it was determined that local control was ineffective, led to a build-up of overstays and permitted an adverse impact on wages. Problems still exist, however, and the Governor of Guam has sought further tightening of the H-2 visa program with authority in Guam to regulate the program.

Virgin Islands

Among the territories, the Virgin Islands has had the most publicized immigration problems. During the 1960s, as a result of a federal decision regarding temporary employment in resort hotels, the temporary alien labor program expanded. By the end of the decade, alien laborers constituted approximately one-half of the Virgin Islands' labor force. A large number of these workers violated their status and remained in the islands illegally. In addition, because of its long coastline and accessibilty to other English-speaking Caribbean islands, the Virgin Islands has attracted other undocumented/illegal entrants. An estimated 10 to 20 percent or more of the islands' population of 120,000 is illegal. Representatives of the islands have asked for special legislation designed to regularize the status of some of the undocumented/illegal aliens and to terminate by statute the H-2 program as it applies in the Virgin Islands. Automatic extension of INA provisions or the Select Commission's proposal for legalization of undocumented/illegal aliens, without considering the special needs of this territory, could cause serious problems.

The Commission has been convinced that flexibility is needed in dealing with the territories. Including all territories under the INA without exception would merely exacerbate the immigration problems that they now face or increase tensions between the territories and the continental United States. There is also little likelihood that there will be sufficient personnel to oversee effectively a uniform federal policy. Federal departments and agencies responsible for the territories generally understaff their territorial offices. INS has been unable to police adequately island shores and interiors and the Department of Labor has been equally unable to ensure the maintenance of fair labor standards. On the other hand, mandating special coverage for all of the territories, including Puerto Rico, would not take into account the wishes of that territory. Moreover, territorial governments are not always better equipped than the federal government to manage the movement and activity of aliens, and in specific instances have been found to be less than effective. The Commission therefore recommends that U.S.policy permit, but not require, special treatment of all the territories.

APPENDIXES

APPENDIX A

RECOMMENDATIONS AND VOTES OF THE SELECT COMMISSION ON IMMIGRATION AND REFUGEE POLICY*

SECTION I. INTERNATIONAL ISSUES**

I.A. Better Understanding of International Migration

The Select Commission recommends that the United States continue to work with other nations and principal international organizations that collect information, conduct research and coordinate consultations on migratory flows and the treatment of international migrants, to develop a better understanding of migration issues.

Commission vote: Yes-16

I.B. Revitalization of Existing International Organizations

The Select Commission recommends that the United States initiate discussion through an international conference on ways to revitalize existing institutional arrangements for international cooperation in the handling of migration and refugee problems.

Commission vote: Yes-16

I.C. Expansion of Bilateral Consultations

The Select Commission recommends that the United States expand bilateral consultations with other governments, especially Mexico and other regional neighbors regarding migration.

Commission vote: Yes-16

I.D. The Creation of Regional Mechanisms

The United States should initiate discussions with regional neighbors on the creation of mechanisms to:

- Discuss and make recommendations on ways to promote regional cooperation on the related matters of trade, aid, investment, development and migration;

- Explore additional means of cooperation for effective enforcement of immigration laws;

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*As former Representative Elizabeth Holtzman was no longer a member of the Select Commission on January 6, 1981, the sum of each vote taken at the meeting is fifteen rather than sixteen.

**The Select Commission voted on a package of proposals which form Recommendations I.A. through I.D.

- Establish means for mutual cooperation for the protection of the human and labor rights of nationals residing in each other's countries;
- Explore the possibility of negotiating a regional convention on forced migration or expulsion of citizens; and
- Consider establishment of a regional authority to work with the U.N. High Commissioner for Refugees and the Intergovernmental Committee on Migration in arranging for the permanent and productive resettlement of asylees who cannot be repatriated to their countries of origin.

Commission vote: Yes-16

SECTION II. UNDOCUMENTED/ILLEGAL ALIENS

II.A. Border and Interior Enforcement*

II.A.1. Border Patrol Funding

The Select Commission recommends that Border Patrol funding levels be raised to provide for a substantial increase in the numbers and training of personnel, replacement sensor systems, additional light planes and helicopters and other needed equipment.

Commission vote: Yes-15 Pass-1

II.A.2. Port-of-Entry Inspections

The Select Commission recommends that port-of-entry inspections be enhanced by increasing the number of primary inspectors, instituting a mobile inspections task force and replacing all outstanding border-crossing cards with a counterfeit-resistant card.

Commission vote: Yes-15 Pass-1

II.A.3. The Select Commission recommends that regional border enforcement posts be established to coordinate the work of the Immigration and Naturalization Service, the U.S. Customs Service, the Drug Enforcement Administration and the U.S. Coast Guard in the interdiction of both undocumented/illegal migrants and illicit goods, specifically narcotics.

Commission vote: Yes-15 Pass-1

II.A.4. Enforcement of Current Law

The Select Commission recommends that the law be firmly and

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*The Select Commission voted on two packages of proposals: Recommendations II.A.1 through II.A.3 and II.A.7, and Recommendations II.A.5 and II.A.6.

APPENDIX A

consistently enforced against U.S. citizens who aid aliens who do not have valid visas to enter the country.

Commission vote: Yes-14 Absent-1

II.A.5. Nonimmigrant Visa Abuse

The Select Commission recommends that investigations of overstays and student visa abusers be maintained regardless of other investigative priorities.

Commission vote: Yes-16

II.A.6. Nonimmigrant Document Control

The Select Commission recommends that a fully automated system of nonimmigrant document control should be established in the Immigration and Naturalization Service to allow prompt tracking of aliens and to verify their departure. U.S. consular posts of visa issuance should be informed of nondepartures.

Commission vote: Yes-16

II.A.7. Deportation of Undocumented/Illegal Migrants

The Select Commission recommends that deportation and removal of undocumented/illegal migrants should be effected to discourage early return. Adequate funds should be available to maintain high levels of alien apprehension, detention and deportation throughout the year. Where possible, aliens should be required to pay the transportation costs of deportation or removal under safeguards.

Commission vote: Yes-15 Pass-1

II.A.8. Training of INS Officers

The Select Commission recommends high priority be given to the training of Immigration and Naturalization Service officers to familiarize them with the rights of aliens and U.S. citizens and to help them deal with persons of other cultural backgrounds. Further, to protect the rights of those who have entered the United States legally, the Commission also recommends that immigration laws not be selectively enforced in the interior on the basis of race, religion, sex, or national origin.

Commission vote: Yes-15 Pass-1

II.B. Economic Deterrents in the Workplace

II.B.1. Employer Sanctions Legislation

The Select Commission recommends that legislation be passed making it illegal for employers to hire undocumented workers.

Commission votes:
Do you favor employer sanctions?

Yes-14 No-2

Do you favor employer sanctions with some existing form of identification?

Yes-9 No-7

Do you favor employer sanctions with some system of more secure identification?

Yes-8 No-7 Pass-1

II.B.2. Enforcement Efforts in Addition to Employer Sanctions

The Select Commission recommends that the enforcement of existing wage and working standards legislation be increased in conjunction with the enforcement of employer responsibility legislation.

Commission vote: Yes-14 No-1 Pass-1

II.C. Legalization

The Select Commission recommends that a program to legalize illegal/undocumented aliens now in the United States be adopted.

II.C.1. Eligibility for Legalization

The Select Commission recommends that eligibility be determined by interrelated measurements of residence--date of entry and length of continuous residence--and by specified groups of excludability that are appropriate to the legalization program.

Commission votes:
Eligibility should be determined by interrelated measurement of residence. No one should be eligible who was not in the country before January 1, 1980. Congress should establish a minimum period of continuous residency to further establish eligibility.

Yes-16

APPENDIX A

The exclusion grounds for undocumented/illegal migrants who otherwise qualify for legalization should be appropriate to the legalization program.

Yes-12   Pass-1   Absent-2

II.C.2. Maximum Participation in the Legalization Program

The Select Commission recommends that voluntary agencies and community organizations be given a significant role in the legalization program.

Commission vote: Yes-16

II.C.3. Legalization and Enforcement

The Select Commission recommends that legalization begin when appropriate enforcement mechanisms have been instituted.

Commission vote: Yes-16

II.C.4. Unqualified Undocumented/Illegal Aliens

The Select Commission recommends that those who are ineligible for a legalization program be subject to the penalties of the Immigration and Nationality Act if they come to the attention of immigration authorities.

Commission vote: Yes-12   No-4

SECTION III. THE ADMISSION OF IMMIGRANTS

III.A. Numbers of Immigrants

III.A.1. Numerical Ceilings on Total Immigrant Admissions

The Select Commission recommends continuing a system where some immigrants are numerically limited but certain others--such as immediate relatives of U.S. citizens and refugees--are exempt from any numerical ceilings.

Commission vote: Yes-15   No-1

III.A.2. Numerically Limited Immigration

The Select Commission recommends an annual ceiling of 250,000 numerically limited immigrant visas with an additional

100,000 visas available for the first five years to provide a higher ceiling to allow backlogs to be cleared.

Commission vote:
Option 1. Provide an annual ceiling of 350,000 numerically limited immigrant visas with an additional 100,000 visas available for the first five years to provide a higher ceiling to allow backlogs to be cleared.

12 votes

Option 2. Continue the present annual ceiling on immigration (270,000) until effective enforcement is in place and then consider raising the ceiling.

4 votes

III.B. Goals and Structure

III.B.1. Categories of Immigrants

The Select Commission recommends the separation of the two major types of immigrants--families and independent (nonfamily) immigrants--into distinct admissions categories.

Commission vote: Yes-16

III.C. Family Reunification

The Select Commission recommends that the reunification of families continue to play a major and important role in U.S. immigration policy.

Commission vote:
Recommendation flows from the combined votes for Recommendations III.C.1. through III.C.5.

III.C.1. Immediate Relatives of U.S. Citizens

The Select Commission recommends continuing the admission of immediate relatives of U.S. citizens outside of any numerical limitations. This group should be expanded slightly to include not only the spouses, minor children and parents of adult citizens, but also the adult unmarried sons and daughters and grandparents of adult U.S. citizens. In the case of grandparents, petitioning rights for the immigration of relatives do not attach until the petitioner acquires U.S. citizenship.

APPENDIX A

Commission votes:
This recommendation encompasses five individual votes:

Spouses of U.S. citizens should remain exempt from the numerical limitations placed on immigration to the United States.

Yes-16

Numerically exempt all unmarried children of U.S. citizens, minor and adult.

Yes-14 No-2

Continue the present practice which allows the numerically unlimited entry of parents of adult U.S. citizens.

Yes-16

The parents of minor U.S. citizen children should be admitted.

Yes-3 No-13

Include grandparents of adult U.S. citizens in the numerically exempt category but without the right to petition for any other relatives until they acquire U.S. citizenship.

Yes-13 No-3

III.C.2. Spouses and Unmarried Sons and Daughters of Permanent Resident Aliens

The Select Commission recognizes the importance of reunifying spouses and unmarried sons and daughters with their permanent resident alien relatives. A substantial number of visas should be set aside for this group and it should be given top priority in the numerically limited family reunification category.

Commission vote:
Option 1. Continue the present practice which limits the number of spouses and unmarried sons and daughters admitted annually to the United States.

9 votes

Option 1A. Continue to admit the spouses of permanent resident aliens within the numerical limitations, but limit the immigration of sons and daughters to only those who are minors and unmarried.

3 votes

Option 2. Exempt the spouses and unmarried sons and daughters of permanent residents from numerical limitation.

4 votes

III.C.3. Married Sons and Daughters of U.S. Citizens

The Select Commission recommends continuing a numerically limited preference for the married sons and daughters of U.S. citizens.

Commission vote: Yes-15 No-1

III.C.4. Brothers and Sisters of U.S. Citizens

The Select Commission recommends that the present policy of admitting all brothers and sisters of adult U.S. citizens within the numerical limitations be continued.

Commission vote:
Option 1. Maintain the present practice which numerically limits the immigration of brothers and sisters of adult U.S. citizens.

9 votes

Option 2. Eliminate the provision for the immigration of brothers and sisters of adult U.S. ciizens from the new immigration system.

No votes

Option 3. Provide for the numerically limited immigration of unmarried brothers and sisters of adult U.S. citizens.

7 votes

III.C.5. Parents of Adult Permanent Residents

The Select Commission recommends including a numerically limited preference for certain parents of adult permanent resident aliens. Such parents must be elderly and have no children living outside the United States.

APPENDIX A

Commission vote:

Option 1. Continue the present system which does not provide for the entry of parents of legal permanent residents.

3 votes

Option 2. Provide for the numerically limited entry of parents of legal permanent residents.

2 votes

Option 3. Provide for the numerically limited entry of parents of legal permanent residents when those parents have an only child in the United States and are elderly.

11 votes

III.C.6. Country Ceilings

The Select Commission recommends that country ceilings apply to all numerically limited family reunification preferences except to that for the spouses and minor children of permanent resident aliens, who should be admitted on a first-come, first-served basis within a worldwide ceiling set for that preference.

Commission vote:

Option 1. Maintain the present practice, with country ceilings applied to family reunification preferences.

2 votes

Option 2. Eliminate country ceilings for family reunification preferences.

3 votes

Option 3. Raise country ceilings to partially accommodate all sending countries.

2 votes

Option 4. Continue country ceilings for all family reunification preferences except that for the spouses and minor children of permanent resident aliens.

8 votes

Pass-1

III.C.7. Preference Percentage Allocations

The Select Commission recommends that percentages of the total number of visas set aside for family reunification be assigned to the individual preferences.

Commission vote:
Option 1. Maintain the present practice which assigns percentages to numerically limited family reunification preferences.

1 vote

Option 1A. Maintain the present practice which assigns percentages to numerically limited family reunification preferences and to immigrants with special qualifications in the independent category.

12 votes

Option 2. Eliminate percentages for the numerically limited family reunification preferences and meet visa demand in higher preferences before issuing visas in lower preferences.

3 votes

III.D. Independent Immigration

The Select Commission recommends that provision should be made in the immigrant admissions system to facilitate the immigration of persons without family ties in the United States.

Commission vote:
Recommendation flows from the combined votes for Recommendations III.D.2, III.D.3. and III.D.5.

III.D.1. Special Immigrants

The Select Commission recommends that "special" immigrants remain a numerically exempt group but be placed within the independent category.

Commission vote: Yes-16

III.D.2. Immigrants With Exceptional Qualifications

The Select Commission recognizes the desirability of facilitating the entry of immigrants with exceptional qualifications and recommends that a small, numerically limited category be created within the independent category for this purpose.

Commission vote:
Option 1. Do not create a separate category for immigrants with exceptional qualifications but allow them to enter as they qualify under the provisions of the independent category.

3 votes

Option 2. Create a small, numerically limited subcategory in the independent category for immigrants with exceptional qualifications.

13 votes

III.D.3. Immigrant Investors

The Select Commission recommends creating a small, numerically limited subcategory within the independent category to provide for the immigration of certain investors. The criteria for the entry of investors should be a substantial amount of investment or capacity for investment in dollar terms, substantially greater than the present $40,000 requirement set by regulation.

Commission vote:
Option 1. Make no special provision for investors.

1 vote

Option 2. Make provision for investors by including them on the Department of Labor Schedule A (if it is retained) or, if not, by other regulation so investors can enter in the independent category.

No votes

Option 3. Create a small numerically limited subcategory of investors in the independent category but increase the amount of the investment to an amount significantly greater than the present $40,000.

15 votes

III.D.4. Retirees

The Select Commission recommends that no special provision be made for immigration of retirees.

Commission vote:
Option 1. Make no special provision for the immigration of retirees.

10 votes

Option 2. Do not create a special category for retirees but make provision by regulation for their entry as independent immigrants if they can prove they have continuing income to be self-supporting.

3 votes

Option 3. Create a numerically small subcategory of visas specifically for retirees in the independent category.

3 votes

III.D.5. Other Independent Immigrants

The Select Commission recommends the creation of a category for qualified independent immigrants other than those of exceptional merit or those who can qualify as investors.

Commission vote:
Option 1. Provide no means for entry of independent immigrants beyond special immigrants and immigrants with special qualifications.

2 votes

Option 2. Provide a subcategory within the independent category for other qualified immigrants.

13 votes Pass-1

III.D.6. Selection Criteria for Independent Immigrants

The Select Commission believes that specific labor market criteria should be established for the selection of independent immigrants, but is divided over whether the mechanism should be a streamlining and clarification of the present labor certification procedure plus a job offer from a U.S. employer, or a policy under which independent immigrants would be admissible unless the Secretary of Labor ruled that their immigration would be harmful to the U.S. labor market.

Commission vote:

Option 1. Revise the present labor certification procedure and require prospective immigrants to have U.S. job offers.

7 votes

Option 2. Revise the labor certification procedure to make prospective independent immigrants admissible unless the Secretary of Labor has certified there are sufficient workers and require prospective immigrants to have U.S. job offers.

No votes

Option 2A. Revise the labor certification procedure to make prospective independent immigrants admissible unless the Secretary of Labor has certified there are sufficient workers but do not require a U.S. job offer.

7 votes

Option 3. Point system based on multiple criteria.

2 votes

III.D.7. Country Ceilings

The Select Commission recommends a fixed-percentage limit to the independent immigration from any one country.

Commission vote:

Option 1. Do not impose per-country ceilings on independent immigration.

4 votes

Option 2. Do not impose per-country ceilings on independent immigration but bar independent immigration to nationals of any country where immigration in the family reunification category exceeded 50,000 in the preceding year, or, if administratively feasible, in the same year.

1 vote

Option 2A. Continue annual per-country ceiling of 20,000 and reduce the number of visas available in the independent category to natives of a country by the number used by that country in the numerically limited family reunification category.

3 votes

Option 3. Establish a fixed, uniform numerical ceiling on independent immigration from any one country.

No votes

Option 4. Establish a fixed percentage as a limit on independent immigration from any one country.

8 votes

III.E. Flexibility in Immigration Policy

III.E.1. Suggested Mechanism

The Select Commission recommends that ranking members of the House and Senate subcommittees with immigration responsibilities, in consultation with the Departments of State, Justice, and Labor, prepare an annual report on the current domestic and international situations as they relate to U.S. immigration policy.

Commission vote: Yes-16

SECTION IV. PHASING IN NEW PROGRAMS RECOMMENDED BY THE SELECT COMMISSION

The Select Commission recommends a coordinated phasing-in of the major programs it has proposed.

Commission vote: Yes-12 No-1 Pass-3

SECTION V. REFUGEE AND MASS FIRST ASYLUM ISSUES

V.A. The Select Commission endorses the provisions of the Refugee Act of 1980 which cover the definition of refugee, the number of visas allocated to refugees and how these numbers are allocated.*

Commission vote: Yes-11 No-3 Absent-1

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*The Select Commission voted on a package of proposals which form Recommendations V.A., V.C. and V.D.

V.A.1. Allocation of Refugee Numbers

The Select Commission recommends that the U.S. allocation of refugee numbers include both geographic considerations and specific refugee characteristics. Numbers should be provided--not by statute but in the course of the allocation process itself--for political prisoners, victims of torture and persons under threat of death.

Commission vote: Yes-11 No-3 Absent-1

V.B. Mass First Asylum Admissions*

V.B.1. Planning for Asylum Emergencies

The Select Commission recommends that an interagency body be established to develop procedures, including contingency plans for opening and managing federal processing centers, for handling possible mass asylum emergencies.

Commission vote: Yes-12 No-3 Absent-1

V.B.2. Determining the Legitimacy of Mass Asylum Claims

The Select Commission recommends that mass asylum applicants continue to be required to bear an individualized burden of proof. Group profiles should be developed and used by processing personnel and area experts (see V.B.4.) to determine the legitimacy of individual claims.

Commission votes: Yes-13 No-1 Absent-1

V.B.3. Developing and Issuing Group Profiles

The Select Commission recommends that the responsibility for developing and issuing group profiles be given to the U.S. Coordinator for Refugee Affairs.

Commission vote:

(On specific motion to give responsibility to the U.S. Coordinator for Refugee Affairs)

Yes-10 No-4 Absent-1

V.B.4. Asylum Admissions Officers

The Select Commission recommends that the position of asylum admissions officer be created within the Immigration and Naturalization Service. This official should be schooled in the procedures and techniques of eligibility determinations. Area experts should be made available to these processing personnel to provide information on conditions in the source country, facilitating a well-founded basis for asylum determinations.

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*The Select Commission voted on a package of proposals which form Recommendations V.B.1 through V.B.5.

Commission vote: Yes-13 No-1 Absent-1

V.B.5. Asylum Appeals

The Select Commission holds the view that in each case a simple asylum appeal be heard and recommends that the appeal be heard by whatever institution routinely hears other immigration appeals.

Commission vote: Yes-13 No-1 Absent-1

V.C. Refugee Resettlement*

The Select Commission endorses the overall programs and principles of refugee resettlement but takes note of changes that are needed in the areas of cash and medical assistance programs, strategies for resettlement, programs to promote refugee self-sufficiency and the preparation of refugee sponsors.

Commission vote: Yes-11 No-3 Absent-1

V.C.1. State and Local Governments

The Select Commission recommends that state and local governments be involved in planning for initial refugee resettlement and that consideration be given to establishing a federal program of impact aid to minimize the financial impact of refugees on local services.

Commission vote: Yes-9 No-3 Pass-1 Absent-2

V.C.2. Refugee Clustering

The Select Commission recommends that refugee clustering be encouraged. Mechanisms should be developed, particularly within the voluntary agency network, to settle ethnic groups of similar backgrounds in the same areas.

Commission vote: Yes-11 No-3 Absent-1

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*The Select Commission voted on package of proposals which form Recommendations V.A., V.C. and V.D.

APPENDIX A

V.C.3. Resettlement Benefits

The Select Commission recommends that consideration be given to an extension of federal refugee assistance reimbursement.

Commission vote: Yes-9 No-3 Pass-1 Absent-2

V.C.4. Cash-Assistance Programs

The Select Commission recommends that stricter regulations be imposed on the use of cash-assistance programs by refugees.

Commission vote: Yes-11 No-3 Absent-1

V.C.5. Medical-Assistance Programs

The Select Commission recommends that medical assistance for refugees should be more effectively separated from cash-assistance programs.

Commission vote: Yes-11 No-3 Absent-1

V.C.6. Resettlement Goals

The Select Commission recommends that refugee achievement of self-sufficiency and adjustment to living in the United States be reaffirmed as the goal of resettlement. In pursuance of this goal, "survival" training--the attainment of basic levels of language and vocational skills--and vocational counseling should be emphasized. Sanctions (in the form of termination of support and services) should be imposed on refugees who refuse appropriate job offers, if these sanctions are approved by the voluntary agency responsible for resettlement, the cash-assistance source and, if involved, the employment service.

Commission vote: Yes-11 No-3 Absent-1

V.C.7. Sponsors

The Select Commission recommends that improvements in the orientation and preparation of sponsors be promoted.

Commission vote: Yes-11 No-3 Absent-1

V.D. Administration of U.S. Refugee and Mass Asylum Policy*

V.D.1. Streamlining of Resettlement Agencies

The Select Commission recommends that the Administration, through the office of the Coordinator for Refugees, be directed to examine whether the program of resettlement can be streamlined to make government participation more responsive to the flow of refugees coming to this country. Particular attention should be given to the question of whether excessive bureaucracy has been created, although inadvertently, pursuant to the Refugee Act of 1980.

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*The Select Commission voted on a package of proposals which form Recommendations V.A, V.C. and V.D.

Commission vote: Yes-10 No-3 Absent-2

V.D.2. U.S. Coordinator for Refugee Affairs

The Select Commission recommends that the office of the U.S. Coordinator for Refugee Affairs be moved from the State Department and be placed in the Executive Office of the President.

Commission vote:
Motion to delete this recommendation failed by a vote of:

Yes-2 No-12 Absent-1

Motion to move the Coordinator's Office to the Executive Office of the President:

Yes-11 No-3 Absent-1

SECTION VI. NONIMMIGRANT ALIENS

VI.A. Nonimmigrant Adjustment to Immigrant Status

The Select Commission recommends that the present system under which eligible nonimmigrants and other aliens are permitted to adjust their status into all immigrant categories be continued.

Commission vote:
Should nonimmigrant and illegal aliens be permitted to adjust to permanent resident status in the United States rather than returning home to obtain a visa?

Option 1: Continue the present system which permits adjustments into all immigrant categories.

9 votes

Option 1A. (Floor Amendment) Allow all persons qualified for immigrant visas to adjust their status, including those groups not now eligible to do so.

1 vote

Option 2: Bar adjustment into any immigrant category.

No votes

APPENDIX A

Option 3: Allow adjustment into the family but not the independent category.

6 votes

VI.B. Foreign Students*

VI.B.1. Foreign Student Employment

The Select Commission recommends that the United States retain current restrictions on foreign student employment, but expedite the processing of work authorization requests; unauthorized student employment should be controlled through the measures recommended to curtail other types of illegal employment.

Commission vote: Yes-13 Pass-1 Absent-1

Otero Amendment. Eliminate off-campus foreign student employment.

Yes-3 No-10 Absent-2

VI.B.2. Employment of Foreign Student Spouses

The Select Commission recommends that the spouses of foreign students be eligible to request employment authorization from the Immigration and Naturalization Service under the same conditions that now apply to the spouses of exchange visitors.

Commission vote: Yes-13 Pass-1 Absent-2

VI.B.3 Subdivision of the Foreign Student Category

The Select Commission recommends dividing the present all-inclusive F-1 foreign student category into subcategories: a revised F-1 class for foreign students at academic institutions that have foreign student programs and have demonstrated their capacity for responsible foreign student management to the Immigration and Naturalization Service; a revised F-2 class for students at other academic institutions authorized to enroll foreign students that have not yet demonstrated their capacity for responsible foreign student management and a new F-3 class for language or vocational students. An additional F-4 class would be needed for the spouses and children of foreign students.

Commission vote: Yes-13 Pass-1 Absent-1

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*The Select Commission voted on a package of proposals which form Recommendations VI.B.1 through VI.D.4.

VI.B.4. Authorization of Schools to Enroll Foreign Students

The Select Commission recommends that the responsibility for authorizing schools to enroll foreign students be transferred from the Immigration and Naturalization Service to the Department of Education.

Commission vote: Yes-13 Pass-1 Absent-1

VI.B.5 Administrative Fines for Delinquent Schools

The Select Commission recommends establishing a procedure that would allow the Immigration and Naturalization Service to impose administrative fines on schools that neglect or abuse their foreign student responsibilities (for example, failure to inform INS of changes in the enrollment status of foreign students enrolled in their schools).

Commission vote: Yes-13 Pass-1 Absent-1

VI.C. Tourists and Business Travelers*

VI.C.1. Visa Waiver for Tourists and Business Travelers from Selected Countries

The Select Commission recommends that visas be waived for tourists and business travelers from selected countries who visit the United States for short periods of time.

Commission vote: Yes-13 Pass-1 Absent-1

VI.C.2. Improvement in the Processing of Intracompany Transferee Cases

The Select Commission recommends that U.S. consular officers be authorized to approve the petitions required for intracompany transfers.

Commission vote: Yes-13 Pass-1 Absent-1

VI.D. Medical Personnel*

VI.D.1. Elimination of the Training Time Limit for Foreign Medical School Graduates

The Select Commission recommends the elimination of the present two- to three-year limit on the residency training of foreign doctors.

Commission vote: Yes-13 Pass-1 Absent-1

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*The Select Commission voted on a package of proposals which form Recommendations VI.B.1 through VI.D.4.

APPENDIX A

VI.D.2. Revision of the Visa Qualifying Exam for Foreign Doctors

The Select Commission recommends that the Visa Qualifying Exam be revised to deemphasize the significance of the Exam's Part I on basic biological science.

Commission vote: Yes-13 Pass-1 Absent-1

VI.D.3. Admission of Foreign Nurses as Temporary Workers

The Select Commission recommends that qualified foreign nurses continue to be admitted as temporary workers, but also recommends that efforts be intensified to induce more U.S. nurses who are not currently practicing their professions to do so.

Commission vote: Yes-13 Pass-1 Absent-1

VI.D.4. Screening of Foreign Nurses Applying for Visas

The Select Commission recommends that all foreign nurses who apply for U.S. visas continue to be required to pass the examination of the Commission on Graduates of Foreign Nursing Schools.

Commission vote: Yes-13 Pass-1 Absent-1

VI.E. H-2 Temporary Workers

The Department of Labor should recommend changes in the H-2 program which would improve the fairness of the program to both U.S. workers and employers. Proposed changes should:

- Improve the timeliness of decisions regarding the admission of H-2 workers by streamlining the application process;
- Remove the current economic disincentives to hire U.S. workers by requiring, for example, employers to pay FICA and unemployment insurance for H-2 workers; and maintain the labor certification by the U.S. Department of Labor.
- The Commission believes that government, employers, and unions should cooperate to end the dependence of any industry on a constant supply of H-2 workers.

The above does not exclude a slight expansion of the program.

Commission vote: Yes-14 No-2

VI.F. Authority of the Attorney General to Deport Nonimmigrants

The Select Commission recommends that greater statutory authority be given to the Attorney General to institute deportation proceedings against nonimmigrant aliens when there is conviction for an offense subject to sentencing of six months or more.

Commission vote: Yes-11 Pass-2 Absent-2

SECTION VII. ADMINISTRATIVE ISSUES

VII.A. Federal Agency Structure

The Select Commission recommends that the present federal agency structure for administering U.S. immigration and nationality laws be retained with visa issuance and the attendant policy and regulatory mechanisms in the Department of State and domestic operations and the attendant policy and regulatory mechanisms in the Immigration and Naturalization Service of the Department of Justice.

Commission vote: Yes-10 No-3 Absent-2

Ochi Amendment: Transfer immigrant visa issuance from State to INS.

Yes-4 No-9 Absent-2

VII.B. Immigration and Naturalization Service

VII.B.1. Service and Enforcement Functions

The Select Commission recommends that all major domestic immigration and nationality operations be retained within the Immigration and Naturalization Service, with clear budgetary and organizational separation of service and enforcement functions.

Commission votes: Yes-14 Absent-1

VII.B.2. Head of the INS

The Select Commission recommends that the head of the Immigration and Naturalization Service be upgraded to director at a level similar to that of the other major agencies within the Department of Justice and report directly to the Attorney General on matters of policy.

Commission vote: Yes-14 Absent-1

APPENDIX A

VII.B.3. Professionalism of INS Employees

The Select Commission recommends the following actions be taken to improve the responsiveness and sensitivity of Immigration and Naturalization Service employees:

- Establish a code of ethics and behavior for all INS employees.
- Upgrade employee training to include meaningful courses at the entry and journeymen levels on ethnic studies and the history and benefits of immigration.
- Promote the recruitment of new employees with foreign language capabilities and the acquisition of foreign language skills in addition to Spanish--in which all officers are now extensively trained--for existing personnel.
- Sensitize employees to the perspectives and needs of the persons with whom they come in contact and encourage INS management to be more sensitive to employee morale by improving pay scales and other conditions of employment.
- Reward meritorious service and sensitivity in conduct of work.
- Continue vigorous investigation of and action against all serious allegations of misfeasance, malfeasance and corruption by INS employees.
- Give officers training to deal with violence and threats of violence.
- Strengthen and formalize the existing mechanism for reviewing administrative complaints, thus permitting the Immigration and Naturalization Service to become more aware of and responsive to the public it serves.
- Make special efforts to recruit and hire minority and women applicants.

Commission vote: Yes-14 Absent-1

VII.C. Structure for Immigration Hearings and Appeals

Article I Court

The Select Commission recommends that existing law be amended to create an immigration court under Article I of the U.S. Constitution.

Commission vote: Yes-8 No-4 Pass-1 Absent-2

VII.C.2. Resources for Article I Court

The Select Commission urges that the court be provided with the necessary support to reduce existing backlogs.

Commission vote: Yes-8 No-4 Pass-1 Absent-2

VIID. Administrative Naturalization

The Select Commission recommends that naturalization be made an administrative process within the Immigration and Naturalization Service with judicial naturalization permitted when practical and requested. It further recommends that the significance and meaning of the process be preserved by retaining meaningful group ceremonies as the forum for the actual conferring of citizenship.

Commission vote: Yes-14 Absent-1

VII.E. Review of Consular Decisions

The Select Commission recommends that the existing informal review system for consular decisions be continued but improved by enhancing the consular post review mechanism and using the State Department's visa case review and field support process as tools to ensure equity and consistency in consular decisions.

Commission vote: Yes-11 No-3 Absent-1

VII.F. Immigration Law Enforcement by State and Local Police

The Select Commission recommends that state and local law enforcement officials be prohibited from apprehending persons on immigration charges, but further recommends that local officials continue to be encouraged to notify the Immigration and Naturalization Service when they suspect a person who has been arrested for a violation unrelated to immigration to be an undocumented/illegal alien.

Commission vote: Yes-13 No-1 Absent-1

SECTION VIII. LEGAL ISSUES

VIII.A. Powers of Immigration and Naturalization Officers*

VIII.A.1. Temporary Detention for Interrogation

The Select Commission recommends that statutes authorizing Immigration and Naturalization Service enforcement activities for other than activities on the border clearly provide that Immigration and Naturalization Service Officers may temporarily detain a person for interrogation or a brief investigation upon reasonable cause to believe (based upon articulable facts) that the person is unlawfully present in the United States.

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*The Select Commission voted on a package of proposals which form Recommendations VIII.A.1. through VIII.A.3.

Commission vote: Yes-14 Absent-1

VIII.A.2. Arrests With and Without Warrants

The Select Commission recommends that:

- Arrests, effected with or without the authority of a warrant, should be supported by probable cause to believe that the person arrested is an alien unlawfully present in the United States.

- Warrantless arrests should only be made when an INS officer reasonably believes that the person is likely to flee before an arrest warrant can be obtained.

- Arrest warrants may be issued by the Immigration and Naturalization Service District Directors or Deputy District Directors, the heads of suboffices and Assistant District Directors for Investigations acting for the Attorney General.

- Persons arrested outside the border area without a warrant should be taken without unnecessary delay before the Immigration and Naturalization Service District Director, Deputy District Director, head of suboffice or Assistant Director for Investigations acting for the Attorney General or before an immigration judge who will determine if sufficient evidence exists to support the initiation of deportation proceedings. With respect to arrests at the border, persons arrested without a warrant should be taken without unnecessary delay before an immigration judge or a supervisory responsible Immigration and Naturalization Service official who will determine whether sufficient evidence exists to support the initiation of deportation proceedings.

Commission vote: Yes-14 Absent-1

VIII.A.3. Searches for Persons and Evidence

The Select Commission recommends that the Immigration and Nationality Act include provisions authorizing Immigration and Naturalization Service officers to conduct searches:

- With probable cause either under the authority of judicial warrants for property and persons, or in exigent circumstances;
- Upon the receipt of voluntary consent at places other than residences;
- When searches pursuant to applicable law are conducted incident to a lawful arrest; or
- At the border.

Commission vote: Yes-14 Absent-1

VIII.A.4. Evidence Illegally Obtained

The Select Commission recommends that enforcement officials using illegal means to obtain evidence should be penalized. The evidence thus obtained should not be excluded from consideration in deportation cases.

Commission vote:
Should evidence illegally obtained be excluded in deportation cases?

Option 1. Enforcement officials using illegal means to obtain evidence should be penalized. The evidence thus obtained should not be excluded from consideration in deportation cases.

10 votes

Option 2. Provide by statute that court decisions relating to the admissability in federal criminal cases of evidence illegally obtained shall apply to deportation proceedings.

3 votes

Absent-2

VIII.B. Right to Counsel

VIII.B.1. The Right to Counsel and Notification of that Right

The Select Commission recommends that the right to counsel and notification of that right be mandated at the time of exclusion and deportation hearings and when petitions for benefits under the INA are adjudicated.

Commission votes:
Should the right to counsel and a notification of that right, at least, be allowed at the time of exclusion and deportation hearings and adjudication hearings?

Yes-12 No-1 Absent-2

Should the right to counsel and a notification of that right be extended to any time after arrest or temporary detention?

Yes-7 No-6 Pass-1 Absent-1

VIII.B.2. Counsel at Government Expense

The Select Commission recommends amending the current law to provide counsel at government expense only to permanent resident aliens in deportation or exclusion hearings, and only when those aliens cannot afford legal counsel and alternative sources of free legal services are not available.

Commission vote:
Should the current law be amended to provide counsel at government expense only to lawful permanent residents in deportation or exclusion hearings and only when aliens cannot afford legal services and when there are no free services for legal services?

Yes-12 No-2 Absent-1

VIII.C. Limits on Deportation

VIII.C.1. Revision of Section 244 of the Immigration and Nationality Act

The Select Commission recommends that the words "extreme hardship" in Section 244 of the Immigration and Nationality Act be changed to "hardship." And that the reference to congressional confirmation of suspension of deportation be eliminated from this section.

Commission vote:
Should the words "extreme hardship" in Section 244 of the INA be changed to "hardship?"

Yes-11 No-1 Pass-1 Absent-2

Should the reference to congressional confirmation be eliminated?

Yes-9 No-4 Absent-2

VIII.C.2. Long-Term Permanent Residence as a Bar to Deportation

Commission Vote:
Should long-term, lawful permanent residence in the United States be a bar to the deportation of permanent resident aliens, except in the case of aliens who commit certain serious crimes?

Option 1: Retain present policy.

3 votes

Option 2: Bar institution of deportation proceedings against long-term permanent resident aliens who have committed deportable offenses (except in cases where heinous crimes are committed); bar the institution of deportation proceedings against permanent resident aliens who are under the age of 18 and have committed deportable offenses (except in cases where heinous crimes have been committed), regardless of the length of residence in the United States.

5 votes

Pass-5 Absent-2

VIII.D. Exclusions

VIII.D.1. Grounds for Exclusion

The Select Commission believes that the present exclusionary grounds should not be retained. The Select Commission recommends that Congress reexamine the grounds for exclusion set forth in the INA.

Commission vote:
Should the present grounds of exclusion be retained?

Yes-3 No-13

Should Congress reexamine the grounds for exclusion presently set forth in the INA?

Yes-13 Absent-2

APPENDIX A

VIII.D.2. Reentry Doctrine

The Select Commission recommends that the reentry doctrine be modified so that returning lawful permanent resident aliens (those who have departed from the United States for temporary purposes) can reenter the United States without being subject to the exclusion laws, except the following:

- Criminal grounds for exclusion (criminal convictions while abroad);
- Political grounds for exclusion;
- Entry into the United States without inspection; and
- Engaging in persecution.

Commission vote:
Should lawful permanent residents be subject to all of the grounds of exclusion upon their return from temporary visits abroad?

Option 1: Make no change in current law.

no votes

Option 2: Make no change in the existing law but suggest standards to interpret the Supreme Court's exception to the reentry doctrine which states that an "innocent, casual, and brief" trip abroad does not meaningfully interrupt one's residence in the United States and should not be regarded as a separate entry in the case of permanent resident aliens.

3 votes

Option 3: Eliminate the reentry doctrine entirely.

2 votes

Option 4: Modify the reentry doctrine so that returning permanent resident aliens (i.e., those who have departed from the United States for temporary purposes) could reenter the U.S. without being subject to the exclusion laws except the following:

a. Criminal grounds for exclusion (criminal convictions while abroad);
b. Political grounds for exclusion;
c. Entry into the U.S. without inspection; and
d. Engaging in persecution.

8 votes

Absent-2

SECTION IX. LANGUAGE REQUIREMENT FOR NATURALIZATION

The Select Commission recommends that the current English-language requirement for naturalization be retained, but also recommends that the English-language requirement be modified to provide a flexible formula that would permit older persons with many years of permanent residence in the United States to obtain citizenship without reading, writing or speaking English.

Commission vote:
Should the current English-language requirement for naturalization be changed?

Option 1: Eliminate the English-language requirement.

2 votes

Option 2: Retain the English-language requirement.

2 votes

Option 3: Retain the English-language requirement, but further modify it for older persons.

9 votes

Absent-2

SECTION X. TREATMENT OF U.S. TERRITORIES UNDER U.S. IMMIGRATION AND NATIONALITY LAWS

The Select Commission recommends that U.S. law permit, but not require, special treatment of all U.S. territories.

Commission vote:
How should the territories be treated under the Immigration and Nationality Act?

Option 1: Continue the present governmental situation: Puerto Rico, the Virgin Islands and Guam are fully covered by the INA; American Samoa and the Northern Mariana Islands are given special treatment.

1 vote

Option 2: Permit, but not require special treatment of all the territories.

11 votes

Pass-1 Absent-2

APPENDIX B

SUPPLEMENTAL STATEMENTS BY COMMISSIONERS

STATEMENT OF COMMISSIONER PATRICIA ROBERTS HARRIS

Establishing Employee Eligibility (II.B.1)

I strongly oppose any national identification system to deal with a minority of the inhabitants of this country, particularly the use of the social security number or card. Such use would encourage forgery and misuse of social security numbers, thereby endangering our recordkeeping system.

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* Recommendations to which these supplemental statements refer are noted in parentheses.

APPENDIX B

STATEMENT OF CHAIRMAN THEODORE M. HESBURGH

The final report of the Select Commission does not reflect precisely the individual views of any one of us. There is no question that if each of us wrote his or her own report, it would be different in some particulars. Like others, I avail myself of this opportunity to offer supplemental views on a variety of subjects which are covered somewhat differently than I personally would treat them.

Flexibility and The Immigration Advisory Council (III.E.)

I am sorry that the Commission rejected a proposal for an Immigration Advisory Council by a vote of 9 to 7. Like Representatives Peter W. Rodino, Hamilton Fish and others, I believe it is important to provide a mechanism for adjusting the number of immigrants which we admit to the United States periodically, perhaps every other year in relation to changed international and/or domestic circumstances.

Long experience shows that it is extremely difficult for Congress to make those adjustments and that there is no one agency in the government capable of coordinating all aspects of research and analysis on the impact of immigrants and refugees on the United States in relation to changed international and domestic circumstances.

In fact, we have no longitudinal research on the impact of immigrants and refugees on the United States. We need such research under a coordinated research program instead of what we now have, research which is often duplicative and sometimes specially targeted to the interests of its governmental sponsor.

Without such a Council it will be extremely difficult to obtain an authoritative annual recommendation for the Congress founded on reliable research as to whether numbers should be adjusted in the light of changed circumstances. Almost everyone agrees that if the U.S. fertility rate goes up, that would suggest some reduction in numbers and vice versa. If unemployment goes down, that would suggest a greater capacity to absorb numbers in any given year.

The Immigration Advisory Council, as proposed, would not create another bureaucracy or even another operating agency. It would be strictly advisory and consist of five distinguished Americans without any particular axes to grind. Only one of its members, the Chairman, would have to serve full time, along with a very small staff of persons, some of whom could be detailed from other agencies.

The Immigration Advisory Council could be extremely useful in serving a few other advisory functions which no other agency in government is capable of performing. For example, in its annual reports, it could take note of policy conflicts between agencies, as sometimes occur between the INS of the Justice Department and the Visa Office of the State Department, and make recommendations directly to the President for the clarification of such conflicts. One other advisory task which could be assigned the Council would be to study and make reports on exemptions from the Immigration and Nationality Act for the territories. At the present time, special treatment may be accorded on an *ad hoc* basis, through regulation or legislation, but no one in the government has the clear responsibility for monitoring the issue and making recommendations to Congress.

Family Reunification (III.C.)

While I favor the priority given to family reunification, I cannot agree with the dilution of the emphasis on the reunification of immediate families--spouses and unmarried children--reflected in the decision to continue a preference for brothers and sisters of U.S. citizens (III.C.4.)

Once we accept the idea of limitation, the question becomes where do we limit. The inclusion of a preference for brothers and sisters of adult U.S. citizens creates a runaway demand for visas. The authors of the present law recognized that there would be tremendous demand by providing 24% of the total visas to be used among all preferences for brothers and sisters. This clearly undermines the ability of husbands, wives and minor children of resident aliens to immigrate. The situation is rapidly worsening. In 1978, there were fewer than a quarter of a million brothers and sisters with numbers waiting for visas. One year later, the number had more than doubled to over a half a million. The reason

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is simple. Once any person enters the country under any preference and becomes naturalized, the demand for the admission of brothers and sisters increases geometrically.

I do not believe we should continue a preference in which there will be an ever-multiplying demand to immigrate totally disproportionate to the number of visas available, creating tremendous political pressures for periodic backlog clearance, and which, in the meantime, takes scarce visas away from those trying to reunify their immediate families.

To illustrate the potential impact, assume one foreign-born married couple, both naturalized, each with two siblings who are also married and each new nuclear family having three children. The foreign-born married couple may petition for the admission of their siblings. Each has a spouse and three children who come with their parents. Each spouse is a potential source for more immigration, and so it goes. It is possible that no less than 84 persons would become eligible for visas in a relatively short period of time. Although I voted to keep a preference for unmarried brothers and sisters, I tend to share Senator Simpson's view that there should be no special preference for them in the family reunification category. Instead, they could compete--with the natural advantage they possess over unrelated individuals--in an enlarged independent category.

Country Ceilings (II.C.6.)

I am pleased that the Commission voted to eliminate country ceilings with respect to the reunification of spouses and minor children with the parents of permanent resident aliens. This a clear vote for a nationality-free, unbiased method of reunifying immediate families not determined by nationality considerations. The idea that persons from several countries would dominate immigration if we eliminated country ceilings and other family preferences does not frighten me, as long as there is opportunity for "new seed" immigrants to come from countries which do not have a strong basis for family reunification and as long as immigrants, and especially their children, continue to be integrated effectively into American life, as research shows to be the case.

It should be clear that no individual would be discriminated against by the elimination of country ceilings. All individuals would simply have to wait their fair turn in line. The maintenance of country ceilings, which I oppose, does discriminate against persons from countries with high demand, a discrimination against individuals by reason of nationality, which is a principle inimical to American ideals. I cannot see how any foreign policy problems would occur. Why should any nation have the right to tell us we cannot reunify families on a first-come, first-served basis free of nationality bias!

Independents (III.D.)

I believe that the Commission made a wise recommendation to separate independent or nonfamily related immigrants from those who come to reunify families. By including the brothers and sisters in the family preference system, it will not be possible to make a substantial increase in the proportion of independent immigrants. I believe this was a mistake because most independent immigrants are persons with tremendous drive, ambition and often a strong desire to become Americans precisely because this is a country of opportunity and freedom. Moreover, there are some countries that because of the accidents of history, do not have a strong basis for family reunification and persons in those countries--whether from Ireland or the Netherlands or newer African countries--do not have much opportunity to migrate under a policy which is so heavily dominated by family reunification.

Investors (III.D.3.)

I also take this opportunity to register my dissent from the creation of a preference for investors. When immigration is so strictly limited, as it must be, it seems wrong to set aside 2,000 visas, out of a total of 350,000, for persons who come primarily to invest. There is nothing wrong with persons who wish to invest and investment is good for the U.S.A., but the rich should not be able to buy their way in to this country.

Employer Sanctions (II.B.1.)

I came to the conclusion early in our deliberations that it is wrong to exempt employers from hiring illegal aliens when it is unlawful for others to harbor them, especially when the main reason that illegal aliens come to the United States is to work. Once having concluded that an employer sanctions law is necessary, the essential question is how to make such a law work without having it discriminate against minority groups, disrupting the workplace or placing too great a burden on employers and eligible employees. The answer lies in some reliable method of employee identification which all of us who are eligible would have to produce when we applied for a new job. Most Commissioners agree with that answer, but disagree with respect to the precise method of identification that should be used.

My own preference is for an upgraded, counterfeit resistant social security card. It would be less costly to improve the social security card and more likely to receive acceptance than a totally new system. It would be against the law to oblige persons to show it except in strict accordance with the law; no one would have to carry it with them; and everyone--not just aliens--would have to use it when applying for a job.

Since the only way an employer could incur a penalty would be if they failed to ask for and see such a card, all eligible employees --including the minorities who are often discriminated against now--would have better protection than ever before against unfair competition and against discrimination. I am also confident that criteria can be established which would protect us all against the social security card being used to unfairly invade privacy.

An important element in having a reliable system which must be addressed has to do with improving the process by which eligible persons can obtain such a card. I believe that both the card and an improved, more secure process for obtaining it are well within the reach of American technology and organizational ability.

Legalization (II.C.)

I certainly agree with the Commission's reasoning on the importance of a legalization program for a substantial portion of the undocumented aliens now in this country and am pleased that the vote on that issue was unanimous. However, I believe the Commission made a mistake in not specifying a period of residence for undocumented/ illegal aliens who would qualify for the legalization program (II.C.1). The decision not to recommend the qualifying of aliens who entered this country after January 1, 1980 is, I believe, correct. I agree with Representative Rodino and Senator Kennedy that we should also specify a period of continuous residence.

My own preference is for the law to state that aliens must have resided in this country continuously for a period of one year prior to January 1, 1981. Under that stipulation, the law would require a period of no less than two years of continuous residence if the legalization program begins January 1982 and three years if it begins in 1983. Any longer period of continuing residence would run the risk of defeating the purposes of the legalization program as recommended by the Commission and present the United States with the serious problem of continuing a substantial underclass with its negative effects on U.S. society. It would also complicate our enforcement efforts in curtailing new illegal migrations and visa abuse. If the period is as long as three years, I believe that the residual group should not be kept in an underclass status. Although I voted that those who did not qualify for legalization should be subject to deportation (II.C.4), a better policy might be to grant that group a temporary status until, after a few more years of continuous work in the United States, it also would qualify for legalization, thus gaining benefits for American society by bringing it out of the shadows into mainstream American life.

Exclusions (VIII.D.1.)

I strongly support the overwhelming Commission vote that our present list of exclusions should not be maintained and that Congress should review them. I will support the effort to eliminate irrelevant, outmoded exclusions among the 33 that have grown like "Topsy," some of which are out of line with American interests and standards of fairness. All exclusions should be such as to protect public safety, national security, public health (as defined in modern times) and public welfare (including some public charge provision). The rest are extraneous and offensive.

Legal Immigration

I know there are a great many people who believe that immigration threatens the United States. That fear is as old as the country. First, the Anglo-Americans feared the German immigrants. Then, the children and grandchildren of those two immigrant groups feared the Irish Catholics. Later, the descendants of all of them feared the Italians, Greeks, Jews, Slavs and other Eastern and Southern Europeans. Now, there is a considerable fear of Hispanic and

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Asian migration, as has also been true in the past.

I do not share those fears. Not only is history comforting but the so is the evidence all around us. The answer to those who worry about the loyalty of Asian Americans or Hispanic Americans lies in the behavior of the most decorated unit in World War II, comprised entirely of Japanese Americans, and in that of Marine Sergeant James Lopez, a recently returned American hostage, who not only made it possible for some of his colleagues to avoid being taken as hostages but who also defied his captors by writing in Spanish on the wall of the room in which he was confined, "Long live the red, white and blue."

Throughout our history, there have been those who would blame immigrants for whatever woes beset the American people at the time. There have always been those who would try to stir up enmity against immigrants among the most needy of our citizens. Such an approach does not serve America well and one must be careful to separate out the legitimate arguments against immigration from those which stem from irrational fear of and hostility to persons who are different.

There are legitimate concerns for population stability, for minimizing budgetary costs in settling refugees and for minimizing competition for jobs. But those legitimate concerns should not--because of irrational fear--be permitted to undermine what are the basic interests of the entire nation. One must be careful of demagoguery concerning any issue. On this issue, emotions run high, and one has to be particularly careful to keep the debate within the boundaries of logical argument based on facts. Let us get illegal immigration under control and continue a legal immigration policy which enables us--as the facts show--to do well by doing good.

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STATEMENT OF COMMISSIONER ELIZABETH HOLTZMAN

While I support a number of the results of the Commission's deliberations, I feel compelled to make it clear that I strongly disagree with several of the Commission's conclusions and the thrust of some of its recommendations, and in one particular area (that of grounds of exclusion) I feel the Commission has abrogated its responsibility--and ignored its legislative mandate--to make recommendations to Congress.

I.

At the outset I would note that I have serious reservations about the research on which the Commission's recommendations with respect to undocumented/illegal aliens was based. I share the opinion expressed previously by several of my colleagues, in particular Commissioner Otero, that far more should have been done to identify the extent and impact of the illegal alien problem. Virtually no new independent research was conducted on this subject and provided to the Commissioners to enable us to make meaningful and informed judgments. We still do not know with any certainty how many illegal aliens are in the United States, nor do we have reliable information on their impact on the economy, or on whether they displace American workers and, if so, in what sectors. Similarly, we have been presented with no new data on the benefits which illegal aliens may provide in the form of increased productivity, additional tax payments or contributions to the social security system. In short, I believe the Commission's decision-making process itself was flawed. Although its conclusions may well be valid, the Commission's judgments on the most significant issue--undocumented/illegal aliens--were made without the benefit of much essential information.

II.

While I do not support general schemes to impose employer sanctions across the board--thereby placing all employers, no matter what the size of their business, in the position of enforcing our immigration laws--I do not oppose the imposition of such sanctions on a targeted basis. With that reservation, I voted in favor of the Commission's initial recommendation endorsing employer sanctions (II.B.1.).

I have little confidence, however, that in and of themselves sanctions will be effective, and I would note that the Commission was offered little in the way of information on the feasibility of implementing such sanctions despite the fact that they have been ineffective at best in states where they have been imposed.

On a practical level, I see little likelihood that adequate resources will be made available to assure that sanctions would be enforced to any appreciable extent. Administration after administration has after all weakened the Border Patrol, and the newest budget proposes further cuts. The INS inspections force is woefully inadequate and the investigative force is at the same manpower level it was twenty years ago. Likewise, the Occupational Health and Safety Administration and the Wage and Hour Division at the Department of Labor, supposed guardians of employee working conditions and the minimum wage, are scandalously understaffed. If these key offices, responsible for maintaining the integrity of our borders and monitoring the workplace, are routinely deprived of the resources to do their jobs effectively, I do not believe there can be any reasonable expectation that sufficient funding and manpower will be made available to enforce an additional all-encompassing federal statute.

On a more fundamental level, I vigorously oppose a national identifier to be imposed with employer sanctions--whether it is a work permit system or a uniform identity card. While for some inexplicable reason the issue of a national identity card was never directly voted upon, the Commission did recommend--by a narrow 8-7 majority--that "some more secure method of identification" beyond existing forms be utilized. I certainly cannot subscribe to this vague precept, particularly when some will no doubt interpret this recommendation as a call for a national identity card.

I have both philosophical and practical problems with such a card. As a philosophical matter, I have serious questions about the constitutional power of Congress to compel all Americans who wish to work to produce a national identity card. It has never been satisfactorily explained to me under what authority Congress could impose such a requirement. I also share the concerns expressed by the U.S. Commission on Civil Rights

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in its recent report, The Tarnished Golden Door: Civil Rights Issues in Immigration. I agree that a national identity card not only raises a serious question of invasion of privacy but also could lead to an erosion of other rights, such as the rights of assembly, speech and association. As the Civil Rights Commission noted: "The establishment of a compulsory nationwide system of identification would mean the imposition of another substantial government program of data collection and information gathering on individual Americans."

It is fundamental, in my view, that a national identity card would serve as yet another mechanism through which government agencies could intrude into the personal lives of individual Americans--and in areas wholly unrelated to immigration. Regardless of the legislative intent, I do not believe it is reasonable to assume that the use of such a card could be limited to the place of employment. Like a driver's license or a social security card, individuals would soon find a national identity card would be utilized for purposes unrelated to the original purpose for which it was created, by organizations and agencies with no connection to the workplace.

Finally, I agree with those who argue that such a system is inherently discriminatory, since it is likely that only "foreign looking" or "foreign sounding" persons would be required to produce the card since penalties would not necessarily be imposed for failure to document eligibility unless the employee was actually unauthorized to work.

I also have practical problems with a national identity card. Although proponents claim a counterfeit-proof card could be produced, I do not believe we can underestimate the ingenuity of the criminal mind and the ability of criminals to duplicate the government manufacturing process--just as they do for another counterfeit $5 or $10 bill. Of course, even if the card were counterfeit-proof, the basic flaw in the system is that existing documents (i.e., birth certificates, social security cards, etc.) would still be used to enable an individual to obtain an ID card, and these documents are, as they always have been, easily counterfeited. And even if the system were foolproof--which it obviously is not--the cost of establishing it (nearly $100 million for design, development, training, etc. according to staff) and operating it ($180 to $230 million annually according to staff) would be prohibitive.

The Catch-22 is evident. With across the board employer sanctions, but without a reliable and uniform employee eligibility system, what remains is an open invitation to discrimination against citizens and lawful permanent residents--against those who speak English with foreign accents, those who look foreign, or those who simply have foreign-sounding names. Even if an employee eligibility system short of a national identity card is utilized, potential problems of discrimination remain. Clearly, employers wishing to avoid additional paperwork or a possible disruption of their business through civil or criminal penalties would simply refuse to hire anyone who conceivably might be an undocumented alien. Given the meager resources currently allocated to enforcement of equal opportunity statutes, I do not believe the threat of a discrimination action is sufficient to deter such conduct.

My inclination, therefore, is not to impose a sanctions system on society as a whole, but to allow prosecutions only in certain, limited situtations. I would focus on major employers knowingly employing large numbers of undocumented aliens, who in addition are violating laws relating to fair labor standards--such as the minimum wage--and working conditions. In this manner, limited enforcement efforts would be directed at those employers who truly were exploiting illegal aliens to displace American workers and drive down wages. I would not impose sanctions across the board on every employer no matter what the size of his or her business.

III.

While I concur with the Commission's proposal that legal immigration be moderately increased to facilitate family reunification and to provide some limited access for independent immigrants, I do not believe the Commission's recommendation accurately reflects the so-called "Fish-Holtzman" proposal as I viewed it in my presentation (III.A.2.). My proposal in fact had three separate components. First, I proposed a permanent statutory scheme providing for the annual admission of 300,000 to 350,000 immigrants subject to numerical limitation. The bulk of these admissions would be reserved for cases of family reunification, with only roughly 55,000 numbers set aside for the so-called "independent" category. I would note that I strongly object to the staff plan which originally proposed that if 350,000 immigrants are admitted subject to numerical limitation,

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250,000 numbers should be allocated to family reunification and 100,000 for the independent category. This breakdown (2 1/2:1) was never voted upon and in fact there was strong sentiment among many Commissioners that any distribution should approximately reflect the current visa allocation ratio of relatives to non-relatives (4:1). My proposal, outlined above, would increase the proportion of relatives in view of the retention of married brothers and sisters as a preference category.

Second, I proposed the enactment of special legislation--separate from the basic statutory scheme--to accommodate those visa applicants currently backlogged and awaiting admission. The number of visas made available annually under such legislation would be contingent on a decision by Congress as to how quickly the backlog should be cleared; my suggestion was to attempt to eliminate the backlog over a 4 to 5 year period by admitting roughly 150,000 applicants per year. Finally, with respect to the admission of the immediate relatives of aliens legalized under the Commission's proposed amnesty, I recommended making no decision on numbers until after the amnesty had taken effect, when the dimensions of the potential relative pool became known. I recommended enactment at that point of another piece of special legislation, to accommodate the demand for immediate relative visas over a reasonable period of years (IV.).

My proposal would separate two one-time extraordinary demands for increased visa numbers--to clear the current backlog and to admit immediate relatives of those aliens who qualify for amnesty--from the basic immigration scheme, thereby not skewing the statute by inflating the numbers for nonrecurring events. (I would note that the Commission's recommendation to increase the base number by 100,000 visas yearly for five years to eliminate the backlog and perhaps to accommodate relatives of aliens granted amnesty is clearly insufficient to meet the demand, even if the number of aliens participating in an amnesty program is extremely limited. The backlog alone is currently over 750,000 individuals.)

IV.

Although I agree with the Commission's findings regarding the inadequacies in the present structure for immigration hearings and appeals, and endorse the recommendation that existing law be amended to create a new Article I Court (VII.C.1.), I believe the report does not go far enough in recommending urgently needed interim actions which could be taken administratively pending the creation of such a Court. As Chairwoman of the House Judiciary Subcommittee on Immigration, Refugees, and International Law for the past two years, I have observed firsthand the innumerable problems in the current administrative adjudication process: delays in reaching final decisions, the general poor quality of immigration judges, the lack of independence of the judges and the Board of Immigration Appeals from the Immigration Service and the Justice Department, the dependence of judges on the Service for administrative and logistical support, and the lack of standard discovery and other evidentiary procedures.

I do not believe we should continue to tolerate this existing situation until an Article I Court is established and I feel several steps must be taken immediately as transition measures. First, the qualifications of immigration judges should be upgraded so that they are at least commensurate with those of administrative law judges in other federal agencies, and a concomitant adjustment in salary levels should be considered to attract competent individuals. Second, immigration judges should be made independent from the Immigration Service and all ex parte communications with enforcement personnel should be eliminated. Third, judges should be provided with adequate--and separate--administrative support so that they can function professionally and render decisions in a timely manner. And fourth, procedures identical to those prescribed under the Administrative Procedure Act should be adopted, and evidentiary rules, including discovery procedures, and rules governing practice by attorneys before the judges and the Board of Immigration Appeals should be established.

V.

Finally, I am disturbed by the Commission's "recommendation" with respect to the antiquated and unworkable grounds of exclusion set forth in the Immigration and Nationality Act (VIII.D.1.),

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a subject of particular importance to many Americans, on which we received extensive testimony during our public hearings, and about which this country has been justifiably criticized by our friends and allies abroad. Despite voting 13-3 at its December 7 meeting not to retain the current 33 grounds of exclusion, the Commission went no further, and, on January 6, decided (without my participation) simply to "recommend" that "Congress should reexamine the grounds for exclusion presently set forth in the INA." I consider this to be nothing less than an abdication of the Commission's mandate as set forth in P.L. 95-412, its enabling statute, which directed it to "conduct a comprehensive review of the provisions of the Immigration and Nationality Act and make legislative recommendations to simplify and clarify such provisions." The Commission has done nothing more than buck this difficult issue back to Congress without any specific guidelines as to how to proceed.

Some of my colleagues who advocated this approach felt that the issue was simply too explosive, that the media would focus on such proposed changes as eliminating the bar against homosexuals or Communists and the resulting political controversy would doom the remainder of the Commission's report and recommendations. While I am sensitive to the controversial nature of some of the proposed recommendations on grounds of exclusion, I cannot subscribe to the view that the Commission should simply avoid this issue on grounds of political expediency. I believe this Commission had an obligation to recommend normative standards, whatever the political repercussions of those recommendations might be. Whether those recommendations were ultimately enacted into law was a decision for Congress to make. But the Commission should have been guided by its best judgment as to what was substantively the proper approach. We should have acted with this in mind; our enabling statute--and the public interest--required no less.

I believe most of us agree that the present 33 grounds of exclusion need substantial reform. In many, if not most, instances they are obsolete and incomprehensible; they are virtually impossible to administer fairly and uniformly. They often undermine one of the primary goals of our immigration policy--the reunification of families--by barring the entry of immediate relatives for inconsequential reasons unrelated to the public health, safety or welfare or genuine concerns of security.

They have caused our country embarrassment in the international arena, particularly with respect to our compliance with the Helsinki Final Act and our commitment to facilitate freedom of travel. The application of the grounds is irrational, directed at immigrants and visitors alike. Because of the harsh consequences which often result from the inability to waive many of the present grounds, the need for private bills has also increased, placing an additional burden on the Congress.

We received eloquent and lengthy testimony on these problems at numerous Commission public meetings and in many letters and legal briefs from groups and individuals. We heard of temporary visitors being questioned, in some cases harassed, about private sexual conduct. We learned of prominent intellectuals, writers, and artists being barred from our shores solely because of their political beliefs. Although I could continue with this litany, I will refrain since I think the point is clear.

Suffice it to say that it is regrettable, to say the least, that after accumulating all this evidence, the Commission refused to act on a specific proposal which I offered which would have deleted outdated provisions, refined and updated terminology, and in general provided for exclusion only for substantive reasons related to the public health and safety, security, criminal conduct, or because an individual was likely to become an economic burden on the community.

In brief, my proposal* would have reduced the current seven health grounds of exclusion from seven to three and focused only on those persons with current medical problems which posed a threat to the public health. It would have excluded individuals on security grounds only for acts or intended acts deemed adverse to national safety or security. Although it would have barred spies, saboteurs, and terrorists, it would not have excluded persons merely for membership in non-violent organizations or advocacy of beliefs or ideas. It would have barred individuals who had engaged in criminal conduct, specifically those who had been involved in serious, violent misconduct (including persecution), but it would have allowed for "rehabilitation"--and permitted entry after a certain period--in other cases. It would have eliminated entirely grounds of exclusion involving private sexual conduct, including homosexuality.

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* See "Grounds for Exclusion" at the end of these remarks.

Finally, my proposal would have permitted all grounds of exclusion other than those involving the most egregious conduct, like murder, or the most serious risks, like security, to be waived for immigrants in the Attorney General's discretion in cases of extreme hardship and to permit family reunification. And, other than those relating to security, public health, criminal conduct, and the persecution of others, no grounds of exclusion would apply to temporary visitors.

I believe my proposal was a reasonable one. It would have eliminated most, if not all, of the problems I alluded to above while preserving the legitimate interest of our government in excluding individuals for certain well-defined reasons. It would have, I believe, brought us into conformity without international obligations, fostered the goals of our immigration policy, and allowed for a more humane and equitable application of our immigration laws. While there may have been debate about some of its specific provisions, I believe the Commission had an obligation to work for a consensus and make concrete recommendations on this issue.

In failing to do so, the Commission did not meet its responsibility--to the President, the Congress, or the American people and did little to enhance our country's image in the international community.

GROUNDS OF EXCLUSION*

ISSUE 1: SUBSTANTIVE GROUNDS

Part 1--Health Grounds

Exclude persons with current medical problems which pose an immediate threat to the public health.

The grounds should be limited to:

(1) Aliens who are afflicted with an infectious communicable disease which constitutes a significant public health danger as determined by the Surgeon General of the United States;

(2) Aliens who are afflicted with a psychotic disorder which creates a threat to the public safety;

(3) Aliens who are narcotic drug addicts [or afflicted with chronic alcohol dependence].

Part 2--Security Grounds

Exclude persons for acts or intended acts deemed adverse to national safety or security.

The grounds should be limited to:

(1) Aliens determined by the consular officer or the Attorney General to be seeking entry into the United States solely, principally or incidentally to engage in any activity which would be a violation of the criminal laws of the United States (including, but not limited to, laws relating to espionage, sabotage, etc.) or the criminal laws of any State relating to other than victimless crimes.

(2) Aliens who are active members of organizations that are engaged in violence or terrorist activities.

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* This draft is not intended to be all-inclusive with respect to grounds of exclusion. It attempts to deal with the five most difficult and controversial areas of the law--the grounds relating to health, security, criminal conduct, moral behavior and economic impact--and certain miscellaneous sections, but it does not reach those sections which are essentially noncontroversial--the grounds relating to documentary requirements, smuggling, etc.

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Part 3--Criminal Grounds

Focus on serious, violent misconduct, and allow for "rehabilitation" in other cases.

The grounds should be limited to:

(1) Aliens convicted of a crime (other than a purely political offense) punishable by a sentence of more than one year or convicted of two or more crimes punishable by a sentence of more than one year in the aggregate committed within 5 years of application for admission, or, if the crime involves violence or serious bodily injury, within 15 years of application for admission. (Aliens should not be admitted until at least 5 years after release from incarceration.)

(2) Aliens convicted of premeditated murder.

(3) Aliens convicted of any narcotics violation involving knowing possession (of more than 100 grams for marijuana) committed within 5 years of application for admission and aliens convicted of a narcotics trafficking violation committed within 15 years of application for admission, or aliens who the consular officer "has reason to believe" are traffickers.

Part 4--Moral Grounds

Eliminate exclusions involving private sexual conduct.

The grounds should exclude:

(1) More than one spouse of any alien admitted to the United States.

Part 5--Economic Grounds

The grounds should be limited to:

(1) Aliens likely to become a "public charge," those unable to maintain themselves in the U.S. for three years after entry without applying for public assistance. (The standard of the

poverty level should not be used as an automatic disqualifying factor; the petitioning family member's record should be taken into account.)

(2) Aliens without labor certification (issue to be dealt with separately).

Part 6--Miscellaneous Grounds

(1) Those who have engaged in persecution (not limited to Nazis) should be excluded.

(2) The ground relating to foreign medical graduates should be deleted. The requirements for those entering to practice medicine should be specified elsewhere in the INA.

(3) The bar against aliens ineligible for citizenship should be deleted.

ISSUE 2: IMMIGRANT WAIVERS

Waivers of grounds of exclusion (other than those relating to security, murder and persecution) should be available for close relatives of citizens, lawful permanent residents, and entering immigrants in cases of extreme hardship and to allow family reunification. Discretion to grant such waivers should rest with the Attorney General.

ISSUE 3: NONIMMIGRANTS

No substantive grounds of exclusion should apply to nonimmigrants other than those relating to security, public health, criminal conduct or persecution. The grounds involving public health and criminal conduct (other than murder) should be waiverable in individual cases at the discretion of the Attorney General.

ISSUE 4: STANDARDS

There should be uniform and compatible criteria established by the Departments of State and Justice with regard to interpreting and apply grounds of exclusion.

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STATEMENT OF COMMISSIONER EDWARD M. KENNEDY

At the first meeting of the Select Commission two years ago, I noted that our mandate touched the heart of what America is today and will be tomorrow. For immigration is both America's past and future.

Immigration demonstrates confidence in the continuing promise of our land. It honors our traditional concern for family reunion. It strengthens the economic and cultural life of our country. And it assures that America will always be a home for the homeless.

However, the Select Commission was created by Congress with the clear recognition that our current immigration laws and policies are out-of-date and inadequate to handle the world migration pressures of our time.

Our task as members of the Commission has been to consider immigration policy in light of America's basic interests, with full regard for our immigrant heritage and our humanitarian tradition. The Commission has succeeded in this difficult task. Its work, its findings and recommendations, and the extensive research material and staff reports represent the most significant and thoughtful study of American immigration law in three decades. Its work has laid the basis for Congressional action this year on reforms that are long overdue.

The Commission did not come to complete agreement on a number of significant points. Many contentious issues remain. My votes have supported the thrust of the Commission's work and I agree with most of the Commission's recommendations. However, I would like to note some areas of disagreement and offer some additional comments.

International Cooperation

I fully concur in the Commission's finding that there must be increased international cooperation on world migration and refugee problems (I.A. to I.D.). The United States must provide leadership in revitalizing existing international organizations that deal with migrants and refugees.

We must strengthen international mechanisms to deal with the growing tide of refugees. The focal point in any such effort must be the United Nations High Commissioner for Refugees. The High Commissioner's role is crucial in our effort to assist and protect refugees. Yet, the UNHCR labors under many limitations flowing from his mandate, which was basically fashioned after World War II and in the Protocol to the U.N. Convention Relating to the Status of Refugees concluded over 14 years ago. The last major effort to mobilize worldwide attention on refugee problems occurred over 20 years ago during the World Refugee Year of 1959.

Since then, there has been an enormous increase in the number of refugees. Relief and resettlement needs have grown dramatically. The complexity of refugee problems has consistently outpaced the ability of governments to respond. Yet the powers of the High Commissioner have remained unchanged.

I support the Select Commission's call for an international conference on refugees, to focus attention on world refugee problems and to review the mandate and authority of the UNHCR and other international agencies involved in refugee programs.

The 1980 Refugee Act

In the meantime, here at home (I.B.), the Refugee Act of 1980 gives us the tools to deal with the resettlement needs of refugees of special concern to the United States. I strongly support the overwhelming vote of the Commission endorsing the general provisions of the Refugee Act (V.A.). It provides a flexible framework for admitting and resettling refugees, and it has been a catalyst for reforming and strengthening the resettlement process. As the report notes, further administrative changes must be made for greater efficiency, but these can be accomplished under the Act without new legislation.

Some have voiced criticism of the Refugee Act. One area of controversy involves the number of refugees eligible for admission under the Act. Implicit in this controversy is the criticism that too many refugees have been admitted under the Act.

But nothing in the Act requires the United States to admit any refugees. The Act was adopted by Congress to improve the framework for resolving the public policy issue of how many refugees, and which refugees, should be admitted to this country.

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The Act has worked. It has succeeded in facilitating this process. It has helped to resettle refugees of special concern to the United States in a more humane and effective way. It has increased Congressional control, without impairing the nation's ability to respond to refugee emergencies.

Some have suggested that the Act should be blamed for the difficulty in dealing with the Cuban and Haitian refugee crisis last year. That criticism is unwarranted. The Refugee Act was never used by the government in dealing with that crisis. It was deliberately by-passed. At the time, I urged the Administration to invoke the procedures of the Act. The Cuban and Haitian crisis involved a flow of people to our shores unprecedented in its character and its diplomatic complexity. The Act was designed for such situations, and it should have been used.

America's Neighbors

I strongly endorse the Commission's recommendation (I.C.) that the United States should expand bilateral consultation to promote cooperation on migration and refugee issues in the Western Hemisphere--especially with our neighbors, Canada and Mexico. These two nations deserve special consideration in our policies. I support higher immigration quotas for each nation. I also support proposals to expand and facilitate the movement of non-immigrants across the Canadian and Mexican Borders.

If we are to achieve greater cooperation with our neighbors, we must consult and agree in advance, before our immigration policies are set. The past teaches that barbed wire fences do not make good neighbors. Immigration is not solely a domestic issue. It is a bilateral and international concern as well.

Undocumented Aliens

I support the Commission's view that we need new measures to cope with the flow of undocumented aliens. The United States cannot have a policy that permits an uncontrolled flow of immigrants. But any controls--and their enforcement--must be fair and humane.

One of the concerns expressed over the Commission's recommendations in this area has been that the Commission is unduly preoccupied with closing the border and with enforcement (II.A.), rather than facilitating entry or safeguarding rights under the law. I share this concern, especially as it reflects the continuing need for more scrupulous sensitivity to the fundamental civil rights of Hispanic Americans.

In most areas, however, the Commission's votes and actions reflect this sensitivity and embrace generous and humane proposals for dealing with immigration problems. For example, the Commission voted unanimously (II.C.) to support a flexible program to adjust the status of undocumented aliens already leading productive lives in the United States. The Commission's votes and discussions indicate a clear recognition that, for an amnesty program to work, it must be comprehensive, it must reach out to as many undocumented aliens as possible, and it must have as few exclusions as possible. Only in this way will undocumented aliens come forward.

One of the most serious omissions in the Commission's votes was the failure to specify a period of continuous residence for undocumented aliens to qualify under the legalization program (II.C.1.). In earlier "straw ballots" of the Commission, most Commissioners voted for two years from the time of the Commission's report, some calling for one year, and no one calling for more than three to four years. It would be my view that the continuous residence requirement should be no more than one year prior to January 1, 1981.

Also, I believe it would be inadvisable to attempt to deport those undocumented aliens who do not meet the specific residency requirement (II.C.4.). A special temporary status could be authorized for those who are not otherwise excludable and who wish to work in the United States. At some point they, too, should be eligible to adjust their status to that of permanent resident alien.

Finally, I agree that increased enforcement efforts must be undertaken as part of the overall reforms the Commission is recommending. But this does not mean that the legalization program should be delayed until the implementation of all the other short-run and long-run administrative and enforcement procedures recommended by the Commission. Rather, the legalization program

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should be undertaken at the same time new enforcement efforts are initiated and funds are authorized (II.C.3.). To delay the program beyond this period would only exacerbate the enforcement problems.

Employer Sactions

Legal sanctions against employers are essential as a matter of fairness (II.B.l.). Sanctions under current law fall solely on the undocumented aliens, not on the employers who may be exploiting them. I favor sanctions against employers who engage in pattern-and-practice hiring of undocumented aliens. The government should have this enforcement tool to deal with the serious problem of exploitation by employers of undocumented aliens.

Part of the incentive to hire undocumented aliens is their willingness to accept substandard wages and working conditions. We must therefore intensify the enforcement of existing laws (II.B.2.), including the minimum wage, OSHA, the Fair Labor Standards Act, social security insurance, unemployment insurance, and Title VII of the Civil Rights Act. Vigorous and effective enforcement of these laws will reduce the incentive for employers to hire undocumented workers.

I oppose the establishment of a new national employee eligibility card or data-bank system. These sweeping proposals are extremely costly (II.B.l.). There are questions whether taken alone, they would substantially stem the flow of illegal aliens. And they present serious threats to privacy and civil liberties. Until these doubts are dispelled, existing identification documents and procedures can and should be used to determine employment eligibility.

One obvious step is to make the Social Security system and card less susceptible to misuse so that it can be used as an effective fraud-proof form of employee identification. The General Accounting Office has recently recommended that the Social Security card needs to be strengthened to protect the integrity of the Social Security system itself. Over a reasonable period of time, we should take the necessary steps to protect the Social Security number and establish penalties for for its fraudulent use. This step will benefit the Social

Security system. It will also avoid the need for launching a costly, new identification system for employment eligibility purposes.*

Increased Ceilings for Immigration

I strongly support the revision of the current preference system to reflect our essential and traditional priorities for the admission of immigrants, such as family reunion, the relief of refugees, and those who will contribute to the economic development and cultural enrichment of our country (III.B.1.).

I support the modest increase in the annual immigration ceiling to accommodate these priorities and to end the backlogs under the existing system (III.A.2.). The proposed 350,000 ceiling is a reasonable target for current immigration policy. In fact, it is less than what is necessary for our country to achieve zero population growth in 40 years at current fertility levels.

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* The General Accounting Office report, issued on December 23, 1980, makes clear the social security number is already used extensively for identification purposes. It can and should, therefore, be used for employment identification if steps are taken to strengthen the Social Security Administration and protect the use of the identification number. Below is the listing of some of the current uses of the social security card by public and private entities:

1. 70 percent of the States use the social security number (SSN) for driver's licensing purposes.
2. Several States use the SSN as one of the identifiers or authenticators in a cooperative, date-sharing network linked with the F.B.I.
3. The National Driver's Register of the U.S. Dept. of Transportation used the SSN.
4. Florida and Utah use the SSN for statewide, educational recordkeeping for high school students.
5. The SSN is used in some instances for vendor identification, for fishing or hunting licenses.
6. Students are sometimes required to use the SSN when applying for the "college board" exams.
7. Many colleges and universities use the SSN for student admission and recordkeeping. (continued)

No ceiling should be placed on immediate family reunion cases (III.A.1.). To do so would be to impose serious and unfair burdens on the rights of American citizens. The admission of refugees can be adequately controlled under the Refugee Act, which requires annual consultations and annual budgetary actions by Congress before refugees can be admitted.

Temporary Workers

I support the unanimous view of the Commission that there is no sound basis for a vastly expanded temporary worker program (Introduction to Section II). Adoption of the amnesty recommendation and implementation of the new immigration system will result in the admission of significant numbers of additional immigrants and an adjustment in the status of up to three million aliens already in this country.

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8. Credit bureaus use the SSN in their data banks as an identifier or authenticator.
9. Many employers, including the U.S. Senate, use the SSN for employee recordkeeping and identification.
10. In addition, the GAO found the SSN is required to:
    - --attend a meeting or social function at the White House;
    - --join the Chamber of Commerce or Jaycees;
    - --take out an insurance policy;
    - --file an insurance claim;
    - --obtain benefits from an estate or trust;
    - --obtain a home mortgage or loan;
    - --check into a hospital;
    - --purchase or obtain title to an automobile;
    - --register to vote;
    - --install a telephone;
    - --argue a case before the Supreme Court;
    - --contribute to charitable organizations through payroll deductions;
    - --register a motor vehicle;
    - --obtain a library card; or
    - --give blood.

Until the impact of these changes is assessed, there is no justification for a large new temporary worker program. If, over time, there is a need for temporary labor, the Congress can and should address the issue. There is no justification for such action at this time. The flow of undocumented workers from Mexico cannot be stemmed by a temporary worker program. And any such program would have serious consequences for American labor that must be fully studied before any such step is taken.

The existing need for temporary workers can be met by streamlining the current H-2 program and making it more effective (VI.E.). I concur in Secretary of Labor Marshall's recommendations on implementing the labor certification process.

Legal Issues

I regret that the Commission did not vote on the suggestions for reforming the current exclusion provisions in the law (VIII.D.1.). The work of the staff and the Commission's Subcommittee led by Attorney General Civiletti and Congresswoman Holtzman, offered reasonable proposals for overhauling the archaic and harsh provisions of Section 212(a) of the Immigration and Nationality Act. Grounds for exclusion should be carefully designed to exclude only those who are deemed a threat to our national security or to public health, safety and welfare. Non-immigrants--such as those visiting this country as tourists or for professional purposes--should not be excluded except on grounds relating to security or criminal conduct. Ideological grounds of exclusion are repugnant to the American tradition of liberty and individual freedom.

Conclusion

As the Commission concludes its work, it is well for us to remember again the comment of Oscar Handlin when he began his study, The Uprooted: "Once I thought to write a history of the immigrants in America. Then I discovered that the immigrants *were* American History."

I am confident that they will remain a part of our nation's future because of this Commission's work. I hope that our recommendations will be promptly implemented, so that we can fulfill the bright future of our immigrant heritage.

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STATEMENT OF COMMISSIONER RAY MARSHALL

Illegal Immigration

Our most serious problem in this complex and controversial policy area is illegal immigration. As I think most Americans recognize today, illegal immigration is the result of sharp international disparities in wages and employment opportunities, which generate powerful links between the desires of aspiring Third World workers for better wages and the desires of U.S. employers for cheaper labor. Economic development will raise Third World wages and job opportunities to meet rising Third World expectations, thereby diminishing the disparities and dampening the push factors that help produce illegal immigration. There are compelling reasons for increased U.S. efforts to help end Third World poverty, but it is important to recognize that economic development will not curb illegal immigration during this century. In fact, as the settling of America itself illustrates, the population, economic and social changes accompanying economic development tend to increase migration. Thus, though illegal immigration is usually considered a sign of the economic failure of sending nations, it is more accurately seen as a prelude to economic success. The "poorest of the poor" do not migrate. They lack the requisite resources.

If economic development in migrant-sending nations is not a short-term solution to the problem of illegal immigration, the only other alternative to restricting immigration, in fact as well as in law, is the no longer feasible open door policy of our first century, when we were an unsettled and agrarian nation in a world with far fewer people.

Illegal immigration is therefore a particularly painful problem for a nation of immigrants because, in the last analysis, it is an enforcement problem.

Enforcing our immigration laws will be economically as well as ideologically painful for some. The economic benefits of a practically limitless pool of workers with Third World wage expectations to U.S. employers who hire them and to consumers who use their goods and services are indisputable. The benefits of illegal immigration to the undocumented workers themselves and to their dependents are equally clear--except, however, when judged by this nation's standard of living.

But those benefits to some must be weighed against their costs to others. These costs include the second-class status of a conservatively estimated 3 to 6 million foreign nationals illegally here; the perpetuation of low-wage, low-productivity job systems that lower the average level of U.S. productivity; increased job competition and depressed wages and working conditions for the almost 30 million low-skilled U.S. workers;* increasing income inequality between advantaged and disadvantaged persons in this country; mounting political and ethnic tensions and sporadic outbursts of xenophobia; strained bilateral relations with sending nations, especially Mexico; and increasing pressure on the integrity of our immigration and labor laws.

The sixfold increase in the number of undocumented workers during the past decade has not been accompanied by a significant increase in the Immigration and Naturalization Service budget. In my opinion, however, though an increase in INS resources is necessary, it is not an effective strategy for controlling illegal immigration. Labor migrations are generated by push/pull forces between both workers and employers. Control over this underground labor market requires disincentives to both sets of participants. Effective protection of U.S. workers from adverse

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* The view that undocumented workers are a cost-free benefit because they take jobs that U.S. workers reject as demeaning is not supported by the data. In 1978, 30 percent of the U.S. labor force were employed as nontransport operatives, farm and nonfarm laborers, and service workers (occupations in which undocumented workers are found)--an increase of almost 3 million since 1972. Their median weekly earnings in 1978 ranged from $59 for household workers to $193 for nonfarm laborers. Nor is the cost-free view of illegal immigration supported by economic theory. See, for example, Michael Wachter's analysis and rough estimate of the impact of 6 million illegal workers on the 15 million fulltimeequivalent U.S. workers earning $3.00 an hour or less in 1978, "The Labor Market and Illegal Immigration: The Outlook for the 1980s," Industrial and Labor Relations Review (April 1980). See also Select Commission Staff Report, "The Economic Implications of Immigration: Labor Shortages, Income Distribution, Productivity and Economic Growth," an analysis prepared by the Department of Labor.

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competition from alien labor--and protection of U.S. employers from adverse competition from those who hire illegal workers--entails eliminating the loophole in immigration law that specifically exempts employers from penalities for harboring undocumented aliens (II.B.1.).

Exemption of employers from sanctions sets us apart from virtually every other developed nation and serves as a strong irritant in our relationship with sending nations. Though there are necessarily two parties to this economic transaction, only undocumented foreign nationals are culpable. Worse yet, this legal inequity increases the dependency of undocumented aliens upon their employers, making them even more vulnerable to exploitation. This, in turn, causes their nations of origin to question the sincerity of our restrictions on the entry of alien workers.

Unless employer sanctions are enacted, U.S. efforts to curtail the entry of undocumented workers will neither be nor appear to be very effective. This will encourage further illegal immigration. A graduated system of civil and criminal penalties, applying to all employers who knowingly hire undocumented aliens but varying according to the magnitude and frequency of offense (like the penalties attached to violations of the Fair Labor Standards Act), is preferable. Considerations of cost effectiveness lead me to recommend that the Department of Labor enforce employer sanctions as part of its ongoing enforcement of labor laws, including the Farm Labor Contract Registration Act, which already includes sanctions against farm labor contractors who knowingly hire undocumented aliens.*

Further, though we Commissioners were divided on this issue, in my view neither employers nor workers will be adequately protected from liability or discrimination, respectively, unless employer sanctions are supported by a more secure method of identifying persons entitled to work here.

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* See Staff Report, "Enforcement of Employer Sanctions for Employment of Undocumented Aliens," a paper prepared by the Department of Labor.

Though some prefer a counterfeit-proof indentification card, I am troubled by its strong potential for abuse. In particular, the unreliability of any card without a back-up verification system would permit unscrupulous employers to hire illegals carrying improper cards with impunity. It would also place employers with a legitimate concern about the legal status of "foreign-sounding" or "foreign-looking" job applicants in a Catch-22 situation of either violating anti-discrimination laws if they place extra burdens of proof upon such applicants or violating employer sanctions if they hire unauthorized aliens. A call-in data bank approach would eliminate those problems because it would place the entire burden of determining a job applicant's work authorization upon the government. The social security system could in principle be adapted to this purpose, since the Social Security Administration is now required to establish the age, citizenship or alien status and identity of applicants for social security numbers. However, technical difficulties in adapting that large a system militate against using it for this purpose.

I therefore recommend development of a stringently safeguarded separate work-authorization enrollment and verification system. This system would require the administering federal agency to verify the work authorization of all job applicants for employers. All new labor-market entrants and job changers would be required to enroll in this system. This system would not, however, require any card. Nor would it require employers to make any judgment as to a job applicant's authorization to work. Instead, job applicants would inform employers of their work authorization number and the minimal data maintained in the worker record system (name, social security number, date and place of birth, sex, mother's and father's name). Employers would receive immediate verification of a job applicant's employment eligibility by calling the work authorization agency's toll-free number. Compliance with employer sanctions legislation would be established by noting in employee records the transaction number of the federal agency's verification. The start-up costs of such a system* would be considerable, but

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* For a detailed example see the Commission Staff Report, "A Work Authorization Enrollment and Verification System: A Technical Working Paper," prepared by the Department of Labor. Note

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they are clearly much less than the costs of continued illegal immigration. For example, in addition to the private losses of 1 million workers, each percentage point of unemployment represents an annual loss of $7 billion in direct, and $15 billion in indirect, costs to the government.

Temporary Workers

Most Commissioners voted against the proposal that measures to curb illegal immigration be accompanied by a large-scale foreign worker program (Introduction to Section II). I believe that this was a sound decision.

In the first place, projections of a "need" for alien workers must be regarded with extreme caution, particularly in times of high unemployment. Additional supplies of low-skilled aliens with Third World wage and employment expectations can not only lead employers to prefer such workers, to the detriment of low-skilled U.S. workers, it can also lead to outmoded labor-intensive production processes, to the detriment of U.S. productivity. Additional unskilled labor is a double-edged sword: it can depress wages and spur the capital investments and process innovations needed to upgrade jobs and improve productivity, or it can depress wages and reduce investment incentives enough to retard investment, causing labor productivity to stagnate. Slower labor productivity growth, in turn, translates into higher prices for internationally traded goods, exacerbating balance-of-payment deficits, to which foreign worker remittances would also add.

Secondly, Western Europe's recent experience with "guest-worker" programs shows that they generate economic, social and

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that the civil rights and civil liberties issues that have been raised with respect to employer sanctions flow from any enforcement of immigration laws. De facto as well as de jure restrictions on immigration require distinguishing between persons legally here and those who are not. To my mind, the preventive strategy of federal regulation of entry into the U.S. labor market, by way of employer sanctions and an enrollment and verfication system apply to all employers and all job applicants, does less violence to these concerns than any other enforcement strategy.

political problems structurally identical with those that we confront today with illegal immigration. In both cases, industrialized democracies with booming economies began using increasing numbers of Third World workers, who had limited civil and labor rights, as supplemental labor in low-skilled jobs. Over time, however, host nation adjustments to the availability of these workers resulted in unanticipated backdoor immigration, as workers remained and their families began to join them. Thus, when economies lagged and unemployment rose in the mid-1970s, xenophobic impulses and racial and ethnic tensions increased in host nations.

In 1975, Western Europe responded to this problem by abruptly ending foreign worker recruitment and by making efforts to integrate into their countries 5 million remaining guestworkers and their 7 million dependents. Wholesale repatriation was considered as inhumane and as economically and politically destabilizing as would a massive deportation of our undocumented aliens. Today, serious political tensions, stemming from the inherently precarious legal status of foreign workers and the costs of providing 4 million "half-lingual" youth with equal opportunity, persist. The rights of these "migrant workers" have thus become an important issue in the United Nations and other international organizations.

Large-scale foreign worker programs therefore not only raise troubling questions about their appropriateness in democracies, they also reveal serious administrative and enforcement problems. The European experience indicates that guestworkers can be distinguished from immigrants only by the degree to which host nations exert real control, as well as legal restrictions, on the movements of foreign workers and their dependents. I do not believe that we, as a nation of immigrants, should be willing to pay the price of ensuring that workers from developing nations contribute much but take little from our economy by creating a program whose cost effectiveness depends upon limiting their labor-market and civil rights, in fact as well as in principle. If, in future years, we achieve full employment and establish a clear and pressing need for additional unskilled labor, I would prefer to admit such workers as immigrants with full legal rights.

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A Legalization Program

Most aliens illegally here have become contributing members of their communities. Many have established families and other ties. Like all my fellow Commissioners, I believe that the human, economic and political disruptions of massive round-ups render them unthinkable. I therefore recommend a generous program granting immigrant status to these otherwise law-abiding and hard-working foreign nationals, and their spouses and minor children, immediately following enactment of employer sanctions (II.C.1.).

A New Immigration Policy

I fully support the humanitarian aims of our current immigration policy, which emphasizes the admission of relatives and refugees but also provides for the admission of a limited number of needed workers. I do not think, however, that substantial changes in immigration policy should be enacted until the full effects of a rational and humane solution to illegal immigration have been absorbed and analyzed (IV.). I also recommend that reformulation of a new policy take into account the results of the 1980 Census, which will provide us with much-needed information about the nearly 5 million immigrants and refugees who arrived during this past decade.

Labor Certification (III.D.6.)

The purpose of the labor certification provision of the Immigration and Nationality Act (INA) is to protect U.S. workers from being displaced or otherwise adversely affected by foreign nationals who seek admission as immigrants for purposes of employment. Thus, while Section 203(a)(3) and (6) of the INA define the two general classes of workers admissible as immigrants and require that they have a U.S. job offer, the current labor certification provision excludes such aliens unless they have first secured certification from the Department of Labor that (1) there are not sufficient workers in the United States who are able, willing, qualified and available at the place of intended employment, and (2) the employment of the alien will not adversely affect the wages and working conditions of U.S. workers similarly employed.

Most Commissioners agreed that U.S. immigration policy should continue to provide for the admission of some immigrants as workers, including a separate subcategory, paralleling the current third preference, for those with special qualifications. All of us appeared to believe that the current labor certification provision places excessive, costly, and yet often ineffective, burdens upon the Department of Labor, upon employers petitioning for the admission of aliens as immigrants, and upon the aliens themselves. But we were divided on the question of a revised labor certification provision.

Some of us recommended changing the language of the provision to enable the Department to certify availability or impact on the basis of statistical labor-market information, rather than by requiring employers and the Department to recruit U.S. workers willing to accept a specific job offer (III.D.6.). We also believed, however, that the current "positive" certification and job-offer requirement should be retained. That is, we believed that prospective immigrants seeking entry for employment purposes should be admissible only after a finding by the Department of a positive U.S. labor need and impact. Other Commissioners, however, thought that neither a job offer nor prior clearance from the Department should be a condition of the entry of immigrants as workers. These Commissioners recommended a "negative" labor certification provision. That is, they believed that prospective immigrants seeking entry for employment purposes should be admissible unless the Department of Labor takes action and demonstrates adverse labor-market impact.

I believe that a negative labor certification provision would certainly result in the displacement of U.S. workers, unless and until such displacement were called to the Labor Department's attention--and many such instances would pass without official notice. Further, without prior clearance of a job offer by the Department, wages paid to such immigrants would often be below prevailing rates and would thus adversely affect U.S. workers. For example, a recent study found that wages in 22 percent of all labor certification applications were below the prevailing rate for the occupation in the area of intended employment.

I therefore suggest that a rational compromise to our lack of consensus on this issue would be to place the two employment-related subcategories of independent immigrants under the

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following revision of the current labor certification provision: "Aliens seeking to enter the United States for the purpose of performing skilled or unskilled labor are excludable, unless the Secretary of Labor has determined and certified to the Secretary of State and the Attorney General that (A) there are not sufficient workers available who are qualified in the alien's occupation and (B) the employment of such aliens will not adversely affect the wages and working conditions of workers in the United States who are similarly employed. In making parts (A) and (B) of the determination the Secretary of Labor may consider statistical information without reference to the specific job opportunity for which certification is requested. An alien seeking certification under this provision must have an offer of employment from a U.S. employer, unless this requirement is waived by the Secretary of Labor."

In my opinion, this proposed revision would at once (1) ensure that immigrants are admitted for employment purposes only if they meet U.S. labor needs and do not adversely affect U.S. workers; (2) facilitate the admission of immigrants with special qualifications, by making special provision for DOL blanket certifications of such immigrants and by allowing the Department to waive the job-offer requirement in appropriate circumstances; and (3) streamline procedures and reduce the costs of labor certification to the government and to employers, by allowing DOL certifications to be made on the basis of statistical information rather than by recruitment efforts. The Department's ability to rely upon statistical information would, in turn, enable it to make adjustments in blanket certifications according to fluctuations in the U.S. labor market.

Finally, while I do not object to the admission of special immigrants, investors, and retirees, these classes of independents should be exempt from the labor certification provision (III.D.1., III.D.3, III.D.4.).

Secretary Muskie has endorsed this proposal. In a January 19, 1981, letter to me, he commented that "...it would not only provide the additional benefits to both American workers and employers that you set forth, it would also be more administrable. For example, not requiring a job offer in connection with getting on a list of eligibles is not the same thing as not having to have a job offer to immigrate. In most instances, a job offer will be necessary to avoid exclusion on public charge grounds.

More importantly, any system that could enable millions to get on an immigrant waiting list with little hope of actually migrating--whether because the numbers are so small or because of other factors--would create an injustice that could seriously damage our international reputation."

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STATEMENT OF COMMISSIONER ROBERT McCLORY

The Select Commission on Immigration and Refugee Policy has compiled an impressive record of hearings and material to facilitate the work of the Congress and the Administration in reviewing our policies and strengthening our laws regarding immigrants and refugees. The Commission has looked at the whole range of problems in this area and has explored questions in depth. I commend the hard and thoughtful work done by both members and staff of the Commission.

Only the United States Congress can amend the laws, and as the branch of government closest to the people, it is important that the Congress reassert its role as decision-maker with respect to numbers and categories of immigrants and refugees admitted to our country. The Select Commission has rendered a timely and significant service to the nation in providing background material and recommendations to help the Congress deal with immigration and refugee policy questions in the 1980s.

Interior Enforcement

Most illegal aliens come to this country to find work. Therefore, I favor imposing sanctions on employers who hire illegal aliens, particularly where there is a demonstrated pattern of hiring illegals, as shown by repeated offenses (II.B.1.). The employer, unlike the illegal alien himself, is stationary, visible, and easily subject to the process of law. He is, in addition, the magnet which draws the illegal aliens to the United States. It is entirely appropriate, therefore, to craft an enforcement strategy which focuses on penalizing the employer who persistently disobeys the law with regard to illegal aliens.

It would not be appropriate, however, to harass the employer by selective and punitive enforcement of laws which are unrelated to the illegal alien problem, such as laws relating to occupational safety or fair employment practices, as some members of the Commission have recommended (II.B.2.). These laws should be enforced in a manner consistent with the purposes for which Congress passed them. They are important purposes, and the agencies charged with pursuing them should not be diverted into an unproductive crusade to enforce our immigration laws. If we cannot enforce our immigration laws with the means which Congress provides, then we should strengthen those means, instead of confusing this objective with a program of selective and possibly prejudicial enforcement of other important laws.

Adult Children of Permanent Residents (II.C.2.)

If we are serious about keeping control over the number of immigrants coming to this country, one place where the Commission may have exceeded necessary generosity is with respect to the adult children of permanent resident aliens. I offered an amendment which would limit immigration benefits to the minor unmarried sons and daughters of permanent resident aliens. Our immigration policy has long been to reunite families, and my amendment is consistent with that policy in that minor unmarried children generally are part of the family of their parents. Once a child reaches majority, he or she is likely to leave home and be independent economically and socially. Limiting the granting of immigration benefits to unmarried minor sons and daughters seems to me to both reinforce the principle of family reunification and at the same time bring some measure of control over the number of immigrants to be admitted.

Retirees/Independent Category (III.D.4.)

The Commission voted to make no special provision to admit retirees in the independent category. I disagree with this conclusion because I feel certain retirees could be of great benefit to the United States. Retirees may be potential investors in businesses in this country at a time when new capital is badly needed. Retirees should not become public charges or qualify for our Social Security system since they have not paid in any funds. The Swiss welcome people in this category despite their otherwise very restrictive immigration policy, and I think we might take a lesson from the Swiss in this regard. I feel we should include a separate group of visas within the independent category for retirees.

Selection of Independent Immigrants (III.D.6.)

I support the system of applying points, using multiple criteria, in the selection of independent immigrants. Through such a means, we can select people to come to this country who show promise of enriching our culture and making our country a better place in which to live. Since the number of independent immigrants is relatively small, the burden on any individual consular officer to apply the point criteria should not be too great. The Canadian government has used the point system for

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many years to select immigrants who qualify for immigration to Canada. Rather than use the labor certification even with a job offer (since the job can be quite temporary in nature and an immigrant can thereafter go to any job he wishes), it seems preferable to me to select those people as immigrants who will bring the greatest benefit to the United States. The criteria could include language skill, education level, and motivation as shown by previous employment and potential employment within this country.

Refugees

During the debate in Congress on the Refugee Act of 1980, I argued that the Congress must regain control over the admission of refugees. The legislation that was enacted by the House contained a one-house veto over numbers of refugees (above a statutory maximum of 50,000) to be admitted during the following fiscal year. However, the provision was dropped in the conference and does not appear in the final version of that legislation.

In light of the provisions of the Refugee Act as finally enacted, and its implementation in fiscal year 1981, I feel even more strongly that the Congress has lost control over the numbers of refugees to be admitted. The consultation process required in that Act gives the Congress no veto power over the Presidential power to admit an unlimited number of refugees above and beyond the 50,000 authorized. In my view, any number of refugees requested by the President over and above the annual ceiling of 50,000 should be subject to the approval of the House and Senate Judiciary Committees. In addition, I feel that some form of Congressional veto should be recommended by the Commission as a check on the authority of the President, as a better way to allow public opinion to influence United States policy on the question of the numbers of refugees to be received in this country (V.A.).

Also, I strongly support all efforts by the United States Government to keep refugees from coming directly to the United States without being pre-screened in third countries. Our experiences with the Cuban and Haitian situations show the great difficulty and public disapproval of the unregulated arrival in our country of thousands of people who then must be cared for and resettled on an emergency basis. I strongly support any efforts by our government to keep control over our borders and whenever possible to keep applicants for asylum elsewhere than in our country until such time as they qualify for admission under the Refugee Act.

Mass Asylum

I strongly oppose the recommendations for an interagency group to plan the setting up of facilities in this country for the purpose of housing and processing large numbers of persons seeking asylum (V.B.1.). It seems to me that such plans would in all likelihood result in relatively permanent facilities, and this would be inadvisable for several reasons. First, they would entail creation of a bureaucracy which would depend for its continuing existence on a flow of refugees or asylees. Second, they would be a sign to all those who might seek asylum that the United States is ready and willing to help, without considering the share that must be borne by the rest of the world community to house and deal with refugees and asylees. Third, they would encourage people to come here without proper screening, before sufficient resettlement plans had been undertaken.

We must be prepared to deal with questions of resettling refugees, but we should not create a bureaucratic and physical establishment which would function as an open and continuing invitation to the world's refugees to come to this country.

Visa Waivers (VI.C.1.)

I support a concept of waiving non-imigrant visas which is similar to that contained in legislation passed by the House of Representatives during the 96th Congress in the form of H.R. 7273. That bill would have authorized a one-year visa waiver pilot program for short-term tourist and business visitors from not more than five countries, to be selected by the Attorney General and the Secretary of State. Countries eligible for selection would be limited to those which do not require visas of citizens of the United States who wish to visit their countries, and whose citizens have a record of low visa abuse.

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Coincidental with the implementation of the visa waiver program, of course, there must be implementation of adequate arrival/departure control procedures, so that abuse by persons coming to this country without a visa may be minimized.

Article I Immigration Court (VII.C.1.)

I oppose the establishment of an immigration court under Article I of the Constitution. At present, there are only two Article I courts: the Tax Court, and the Court of Military Appeals. In 1984, the Bankruptcy Court will be fully operational under Article I.

The present system, whereby immigration judges are dependent upon the Immigration and Naturalization Service for much of their office support, is unacceptable. While immigration judges should be independent of the agency whose cases they must decide, this could be done by establishing by statute an independent body within the Department of Justice, consisting of administrative law judges assigned to hear immigration cases. This would preserve the function and responsibility of the Attorney General under the Immigration and Nationality Act and yet provide a much greater degree of independence to this process.

The Board of Immigration Appeals, currently created under Justice Department regulations, could be incorporated into this organization, thereby giving a party a right of appeal from an adverse ruling by an immigration judge.

There are similarities between this proposal and the United States Parole Commission, an independent agency which presently exists within the Department of Justice.

It is unnecessary to create another specialized court, under Article I, to assure that aliens have an opportunity to protect their rights under the immigration law. The steps I have outlined would be fully adequate to accomplish this end.

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STATEMENT OF COMMISSIONER EDMUND MUSKIE

Immigration and Foreign Policy (Recommendation II.A.8.)

I agree that immigration law should not be selectively enforced on grounds of race, religion, or sex. I believe, however, that our immigration laws should permit necessary enforcement with respect to aliens of a particular nationality for valid foreign policy reasons. I would note that such measures were upheld as conforming with due process in Narenji v. Civiletti, 617 F.2d 745 (D.C. Cir. 1979).

Resource Implications (Recommendation III.A.2.)

I would be derelict not to note that these proposals would require (1) substantial increases in personnel, (2) a significant redistribution of personnel, and (3) important requirements for new office space. These logistics factors cannot be ignored.

It must be recognized that a very small staff is engaged world-wide in immigrant visa processing--about 175 officers and less than 700 Foreign Service National (FSN) clerical employees. Thus, even relatively small increases in workload would have an enormous impact.

But small increases are not called for. The annual numerical limitation on immigration would rise from 270,000 to 350,000, i.e., about 30%. In addition, for five years, there is a proposed additional increase of 100,000 for "backlog" clearance. Thus, for the first five years, the total increase would be 66%. Moreover, in the latter group the proportion of applicants for adjustment of status to visa applicants will likely be smaller than normal for technical reasons. Therefore, the actual immigrant visa caseload increase should be about 50% during the first five years.

An increase of this magnitude will clearly require staff increases. These will involve time delays because of budgeting, recruitment, and training requirments and procedures.

At the same time, the proposal to eliminate the per-country ceiling on close relatives of permanent residents will have two effects. First, it will result in a redistribution of workload. Whatever the substantive merits of the country ceiling issue, this proposal will result in focusing caseload in a relatively few countries with resulting caseload decreases in many others. Thus, the Department will face not only the need for more staff, but also the need to redistribute existing staff. The transfer process for officer personnel is cumbersome but it does exist, and officer personnel are subject to world-wide assignment availability. FSN employees are not subject to the latter system and very rarely can they move from country to country to continue employment with the USG. Thus, staffing shifts at the support level will involve laying off FSN's in certain countries and hiring FSN's in others.

Second, these workload shifts and increases will require changes in working space. Excess space may be created at some posts. However, at posts with increased workload, additional space will be required, through leasing, purchase or new construction. In some cases, these requirements may face us with insurmountable problems. The Consulate General at Quangzhou, China, for example, will get a sizable workload increase without space for either additional personnel or applicants. It is located on the eleventh floor of a hotel. There is no possibility for expansion. Construction of a new building could not be completed before 1985.

I raise these points not as substantive arguments against these Select Commission recommendations. Rather, they are to provide a clear picture of the funding that will be required to ensure the effective implementation of the recommendations to those who will consider their adoption. I believe it would be irresponsible to create a new immigration system while failing to ensure that it can be effectively administered.

Country Ceilings (Recommendation III.C.6.)

I share the general concern for family reunification and wish it were possible to accommodate within a numerically limited system all those, especially spouses and children, who want to immigrate to join their relatives here. As that is not possible, I must express my serious concern that the absence of application of country ceilings, particularly in the "family" category, would cause significant foreign relations repercussions.

My concern lies, first, in the fact that, given a world-wide limitation, preemption of the limited numbers by persons born in a handful of nations can only be at the expense of immigration by natives of the rest of the world. There could and would be

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very adverse reactions if individuals from about 140 nations could not immigrate because all "numbers" were used by those from less than ten other countries. In short, the question is not whether families should be separated for some period of time but which families--some proportion of those in a few countries, or most if not all in a great many countries. This situation differs greatly from that of prior times when predomination of immigration by a few countries could not deter immigration from other places, either because there was no limitation or because the numerical control mechanisms were different.

A second and no less serious concern lies in my view that, in effect, the absence of country ceilings allows the emigration policies of other countries to determine our immigration pattern. I believe strongly that we should not abdicate control over so important an element of our national life.

Finally, I believe that the concept of uniformity of treatment established by country ceilings is a positive factor in our national image as perceived in foreign countries.

Right to Counsel (Recommendation VIII.B.1.)

I note that the term "benefit" as used in this recommendation necessarily includes a visa, since it is settled that an alien has no Constitutional right of entry into the United States. Requiring that a visa applicant abroad be entitled to counsel as a right will create both substantive and administrative problems of a substantial nature.

If the term "counsel" were to be defined (as present practice indicates it is intended to be) as a members of the bar of a state of the United States, foreign attorneys would be excluded, with the possibility of conflict between the Department of State and the foreign attorneys and/or their governments. Moreoever, given the nature of the nonimmigrant visa process, such processing would be seriously slowed and complicated by such a requirement. The need for interpreters in cases in which the applicant speaks no English and the attorney does not speak the applicant's language would add to this difficulty.

I cannot support a recommendation which would create such administrative and substantive problems and which appears founded in the notion that a visa applicant abroad who is not a resident of the United Sttes should be placed in the same Constitutional posture as citizens, residents and other aliens physically present in the United States.

Mass Profiles For Determining Asylum Status V.B.2,3.)

I agree that the use of mass profiles would be helpful, in some instances, in determining the grant of asylum or refugee status but must emphatically insist that they not be used exclusively as the determining factor. The Refugee Act of 1980 and the UN Protocol on Refugee Status require that refugee/asylum status be granted to those who establish a well-founded fear of persecution based on race, religion, nationality, membership in a particular social group or political opinion. Persecution based on one's political opinion (which is the basis for most asylum requests) by its very nature, demands individual, case-by-case consideration. It should be noted that the High Commissioner for Refugees under the League of Nations attempted to use group profiles for the determination of refugee status and ultimtely abandoned this procedure due to the need for constant revision to accurately reflect rapidly changing conditions.

I strongly believe that the Department of State should be responsible for the preparation and distribution of the profiles since the Department is the most competent to assess conditions in foreign countries and most experienced in reviewing and formulating advisory opinions relating to asylum requests.

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STATEMENT OF COMMISSIONER ROSE MATSUI OCHI

Immigration and refugee policy has become one of the most significant domestic and international issues confronting this nation and will remain so throughout the remainder of the century. As we seek to consider immigration policies in light of the national interest, it is important to take a lesson from history in order to avoid repeating the shameful mistakes of the past.

A review of the history of immigration to America reveals that each new group of migrants was subjected to cruel treatment and harsh injustices; and that during times of economic recession they were made scapegoats for the nation's socio-economic problems. The anti-alien sentiment manifested itself in discriminatory restrictive immigration laws and in arbitrary practices that disregarded constitutional protections. Despite the several revisions to the Act, intended to make the system fairer by abolishing racial and national origin restrictions, the present laws with their numerical limitations and quotas have a disproportionate impact, i.e., a discriminatory effect on Asian and Latin American countries, particularly Mexico. Paradoxically, although this nation embraces the principle of anti-discrimination and constitutional safeguards, in the area of immigration law enforcement and administration, there still exist blatant contradictions with the basic values of our democracy that are widely acknowledged and yet benignly ignored. I believe it serves the nation's interests that our immigration laws be humane and just and be enforced and administered in a non-discriminatory way.

When viewed in the context of this historical framework, the Commission's Report of Conclusions and Recommendations will shed little new light on a subject riddled with much nonsense, myths and hypocrisy, and will represent a backward step in the evolution of progressive national policy. While I concur with a substantial part of it, I believe that the Commission has erred on some of the important issues. Thus, I am compelled to present supplemental views to clarify my position, and to explain my opposition to several of the recommendations.

International Issues (I.A. to I.D.)

To moderate migration pressures will require an examination of U.S. foreign policies which contribute to the "push." Specifically, the study of the correlation between foreign aid and military intervention and migration to America of both refugees and immigrants should be undertaken.

Illegal Aliens

Illegal immigration is a complex phenomenon which must be analyzed on two related but divergent levels: the reality and the perception people have about the phenomenon. The research on the subject does not provide a profile of the illegal population, but the accepted reality is, to a large extent, illegal immigration is a creature of the limitations of our current policies and oversubscribed quotas, and of the failure to retard the continuing demands of our secondary labor market for cheap laborers. Current laws have been criticized for causing illegal immigration because they are restrictive in not allowing access from certain countries, and in their failure to be tailored to meet migration pressures; because they are ineffectively administered which exacerbates the large backlogs and because they bring in nonimmigrant foreign laborers. Public perception of immigration closely mirrors the state of our economy. During periods of unemployment, the undocumented worker becomes a scapegoat who is blamed for unemployment and is subjected to deportation. When the economy recovers, concern about immigration again fades into the background. Indeed, immigration is even encouraged to fill gaps in our labor force. A study of the use of foreign laborers reflects that the jobs available to illegals repeat a historic pattern that has been filled by a succession of unskilled workers: the Chinese and Irish in the mid-19th century, Italians and East Europeans in the latter part of the century. But those groups came legally. Today, the demand for cheap laborers to do the "scutwork" are filled by illegals.

The fact of the matter is Mexican undocumented workers are a boon to the U.S. economy because they typically take jobs which Americans will not accept, and their labor costs are much lower. It is not simply a coincidence that areas with the greatest number of undocumented workers have a correspondingly high economic productivity level. The research does not show that the toleration of large-scale illegal immigration can have a pernicious effect on U.S. society. There is no evidence being proposed that undocumented immigration constitutes a national calamity so damaging to the American people that it requires the kind of repressive enforcement measures being presented. It seems far more sensible to develop strategies to deal with the causes of illegal immigration. Instead of temporary workers and new costly enforcement programs, hard-working unskilled immigrants should also be provided legal entry via our immigration goals with flexibility in the system to better accommodate varying migration pressures.

Border and Interior Enforcement

I am concerned that the enforcement tenor of the report may create a climate to encourage practices which violate the civil rights of aliens and residents alike and which promote the use of abusive tactics and excessive force and violence in enforcement. Current immigration enforcement programs have a disparate impact on "foreign looking" U.S. citizens and lawfully admitted resident aliens who possess ethnic characteristics similar to major immigration groups. Certain ethnic groups have disproportionately been the target of anti-alien activities. In the 19th Century the Asians bore the brunt of the attacks which today are focused on Mexicans. I have urged the need for the Commission to take a position against interior enforcement programs directed at individuals based solely on one's national origin (II.A.8.). For example, the recent Iranian student sweeps is an example of the problem. I believe, apart from raising constitutional questions, these practices will have serious social consequences in creating alarm in certain ethnic communities to believe that one's status will remain forever tenuous and dependent on one's mother country's relation to the U.S., and that to fear that persons may be subject to selective governmental sanctions based on nationality alone, these practices should be repudiated and INS enforcement should be non-discriminatory.

Economic Deterrents in the Workplace

I emphatically reject the Commission's employer sanction proposal (II.B.1.). In addressing this question it is imperative that we not separate the principle of employer sanctions from a consideration of the means of objective verification and of the enforcement ramifications. The Commission has failed to evaluate the cost of implementing an employer sanctions law through issuance of a "secure" ID card; the burden it places on employers; and the difficulty workers in the marginal sector of the secondary labor market, the very workers that this law is meant to protect, will have the most difficulty in establishing their eligibility for "secure" ID cards. The Commission ignored the evidence that nowhere have such laws been shown to be effective in stemming illegal immigration; the concern that it will spawn fraudulently established non-counterfeitable IDs; the problem created by the unlikelihood that adequate resources will be allocated resulting in spotty enforcement, the low priority given by U.S. prosecutors of white collar crimes, the record of courts in sentencing in the area of economic crimes, the public cynicism that will result from lack of enforcement, the likelihood of driving the unscrupulous employer underground possibly exacerbating exploitation; and the probability of accelerating run-away industry to developing countries at the expense of native workers.

I am also deeply troubled over the cavalier attitude in dismissing the concerns of minorities who will bear the brunt of discriminatory hiring and enforcement. All "foreign looking" persons will be subjected no doubt to stricter scrutiny. The notion that everyone would be required to establish eligibility (national ID card or databank system) in order to be protective of the civil rights of minorities is blatantly preposterous and patently offensive. Moreover, this system has a potential for grave consequences for the invasion of privacy that can be harmful to the civil liberties of all. I am convinced that the questionable effectiveness balanced against the recognized risks involved dictate a need for more study and caution. The incentive to hire undocumented workers could be removed through other less costly and socially disruptive measures which could provide a dual benefit to native workers. Vigorous enforcement of existing laws including minimum wage, OSHA, the Fair Labor Standards Act, social security insurance, unemployment insurance, and Title VII of the Civil Rights Act should be instituted before such extreme measures can be justified.

Temporary Workers

I applaud the Commission for expressly rejecting a guest-worker program (Introduction to II.) and for providing that the current H-2 program be streamlined, and cooperation to end dependence of any industry of H-2 workers be accomplished (VI.E.).

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I am uncomfortable that these decisions may not bring an end to the exploitation of foreign workers if Congress holds a proxy for certain industries. I am afraid that a streamlined H-2 program may create a politically expedient "backdoor" for a substantial broadening of the scope of the program and creating an increase in the use of H-2 workers, with a lessened requirement for labor certification creating higher unemployment of domestic workers, and without protection of the rights of H-2 workers for lack of provision of standards, oversight and sanctions.

The history of the institution of foreign laborers to do work for cheap wages in this country is one of shame. It points out that this nation supplemented its manpower needs through both immigration and contract workers, and that it is no accident, but by design, that there was resort to the latter means when the workforce was made up of persons otherwise considered undesirable as immigrants, i.e., people of color. If, indeed, there exists a need to augment the labor market in certain industries, foreign workers to fill the requirements should also be provided access via the Independent Category. This country's strength was derived from our ancestors who were, for the most part, largely unskilled and illiterate. America should still provide a place for the humble with dreams who can contribute to our future vitality. We can no longer legitimize the separation of economic and political participation in our free society. I firmly believe that a guestworker, companero, streamlined H-2 program, or by any other name is not the answer, and should be phased-out.

Legalization

The Commission approved a liberal amnesty program in principle only. The proposal failed to follow-through its promise of being generous, fair and fail-safe. It is a sham. Out of an apparent concern over political palatability the amnesty program became so unattractive that it will likely get no takers. I urged that the proposal include flexibility in the determination of "continuous residency" because this requirement would tend to disqualify a substantial number of Mexicans (II.C.1.). This may be cynical but it appears that those who insist on the effective implementation of massive enforcement efforts intend that certain targeted illegals will be driven out of the country before given an opportunity to participate in the legalization program. Such a drive would surely result in creating fear and suspicion, ensuring low participation and driving the undocumented further underground.

I believe, after once deciding the threshold question of allowing an adjustment of status of illegal aliens, it is deceptively unfair to set a trap for the unwary by providing deportation of those who are found ineligible (II.C.4.). Many undocumented are simply undocumentable. Whether deportation is immediate or delayed, it does not deserve the label fail-safe. A program to assure maximum participation should provide those who fail to qualify a temporary status with the opportunity to, after a few years, qualify for permanent resident having demonstrated to be responsible contributing members of society based on a good work record and payment of taxes. There should be few grounds for excludability. I would recommend the Registry approach of good moral character enacted under the federal amnesty programs (Sect. 249). While I have advocated for a shorter residence requirement, Congress should adjust its cut-off date from a period not less than two years prior to January 1, 1981.

The Admission of Immigrants

I strongly endorse the restructuring of the preference system which will facilitate the admission of immigrants and which reaffirms the family reunification principle as the touchstone of our immigration goals (III.C.). The Commission recommendations have expanded the definition of immediate relatives of citizens, has opened up the possibility, albeit limited, of reunification of citizens with grandparents, of permanent residents with parents, and has rejected the move to eliminate the brothers and sisters category III.C.4.). The ostensible reasons given for the need to eliminate the brothers and sisters classification is the potential for exponential growth. Yet if there is such a concern over numbers, how is it that as many as 200,000 Independents was proposed? The implications are ominous if the real intention is to curtail the policy now that early stock has reunited their families, and the pressures have shifted to non-white countries. Clearance of the backlogs will remedy the vestiges of the earlier Asian exclusion laws. However, the Commission failed to eliminate the per-country ceilings which have a restrictive effect on Asians and Mexicans (III.C.6.). I would favor a more generous overall ceiling,

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dropping the per-country limitation for all categories because without such changes, I fear, new backlogs will develop in high-demand countries again.

Although I support in principle the concept of allowing the entry of persons without ties to the U.S., "New Seed, (III.D.)" I am against elitist admission criteria that fail to provide an escape valve for the undocumented, that exclude the unskilled and the uneducated who are needed and desired as temporary workers or H-2 but not as immigrants, and that make distinctions along class and color lines. I suspect that this category is being created for admissions from developed countries of skilled professionals who will displace American workers because job certification procedures will be a joke. I would recommend that the present ratio of 4:1, family reunification to labor, (280,000--70,000), should be retained, and numbers for this new category should not be allocated at the expense of any existing category, namely brothers and sisters (III.A.2.).

Phase-In (IV.)

Clearance of the current backlogs should precede and not be tied to an enforcement or legalization program.

Refugees

While the 1980 Refugee Act took a major step toward seriously addressing how our asylum and refugee laws can be made more non-discriminatory, ideological and geographic discrimination continues to pervade the implementation of the laws (V.A.1.).

Non-Immigrant

Providing authority to the Attorney General to deport non-immigrant aliens for conviction of an offense subject to sentencing of six months or more is too broad (VI.F.).

Administrative Issues

A parade of witnesses testified that INS policies and procedures infringe on civil rights of minority citizens and aliens; that INS is enforcement-oriented and gives lesser priority to services; that according to testimony, Asians particularly suffered from insensitive, and inequitable treatment; that INS enforcement operations are discriminatorily targeted on Mexican nationals resulting in denial of rights to citizens, residents and aliens. The Commission has failed to adequately respond to the need for putting some teeth into the complaint and disciplinary procedures to stop numerous reported incidences of verbal and physical abuses by personnel failed (VII.B.3.), to limit and check the discretionary powers of INS, has left unfettered a consular officer's singular visa issuance authority (VII.E.) with serious potential for abuse of discretion by not providing an independent review of visa denials, and has ignored the need for more resources to improve INS service responsibility capabilities, and the deployment and allocation adjusted to meet shifting pressures. In the case of appeals, I recommend that appeal be taken from the Immigration Court under Article I to the U.S. Court of Appeals and not the Supreme Court (VII.C.1.).

Legal Issues

I am extremely disappointed that all the recommendations developed by the Commission's Legal Task Force included in the Appendix were not considered by the full body. The Commission did make some inroads into bringing immigration laws involving procedural rights from the Stone Age into the 20th Century. However, essentially the Commission dropped the ball on the INA revision package and treated certain legal issues like a "hot potato." Application of the exclusion rule governing illegally obtained evidence was not extended to deportation cases (VIII.A.4.). The remedy provided of penalizing the offending officer does not aid in the case in point nor will likely curb illegal searches in the future. The Commission ducked on the issue of modernizing our exclusion and deportation laws (VIII.D.1.). Experts are virtually unanimous in their view that the present laws are archaic and far more severe than is required by our national interest. I would support the limitations for the grounds for exclusion and deportation provided by the Holtzman proposal, the Task Force on Legal Issues, and the Legal and Administrative Issues Subcommittee.

Language Requirement for Naturalization (IX.)

It is recognized federal policy that English literacy is not a prerequisite for obtaining voting rights. This policy recognizes the ability to intelligently exercise this privilege without such knowledge. I would suggest that if it is deemed in the national interest that residents become citizens then I would submit that all artificial barriers to full participation be eliminated to effectuate this goal including dropping the English-literacy requirement.

Abolishing the requirement recognizes the inability of certain individuals to learn English, and it will not result in discouraging the acquisition of these skills--a valued proficiency--for upward mobility by the more fortunate.

Conclusion

As we move to a national debate on these important issues, the Report will serve as a catalyst for public dialogue, and will stimulate needed research to form the basis for more rational and coherent policy development. It is hoped that the Commission's actions on the "enforcement/keeping out" versus the "services/bringing in" side of the paradigm not be misinterpreted and overshadow our work as a whole. It is critical that Congress seek to balance the many competing interests, to dispel myths with facts, and to reject new euphemisms for old prejudices with a goal of fashioning a policy which will best promote the common goal--mindful that it will shape our shared destiny.

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STATEMENT OF COMMISSIONER J.F. OTERO

General Remarks

I am greatly interested in the potential impact of this report on the future of immigration policy. However, I have important reservations about the manner in which the Commission's decisions are reported in this document. In my judgment, various sections of this draft report do not accurately represent the intent of the Commission's votes and decisions.

On January 13, 1981, I submitted reasoned language changes to the first draft dated January 15, 1981. Regrettably, only changes in style proposed by me were incorporated in the second draft. Most of the substantive language changes arguing for a true reflection of the Commission's votes were rejected or redrafted in form but not in substance. I will refrain from repeating here each and every language change suggested by me on January 13. Instead, I will confine my remarks only to key areas of the report, about which I am greatly concerned.

Temporary Workers (H-2 Nonimmigrants)

The DeConcini-Otero amendment, offered after extensive debate, was approved by a vote of 14-2 (VI.E.). This action by the Commission made it crystal clear that the overwhelming majority had rejected consideration of any new, large-scale, temporary or guestworker program now or in the future. This decision should be reported in unmistakable terms leaving no room for conjecture or misinterpretation.

Border and Interior Enforcement, Recommendation II.A.8

In the strongest terms I object to the characterization of all INS employees as being insensitive, unresponsive, mean and unmindful of the rights and liberties of individuals. During the various meetings of the Commission, I argued that, while there may be isolated cases of misbehavior by some INS employees, it would be a great travesty of justice to paint with a wide brush all INS employees as falling under such category. In fact, I argued both in writing and orally that the causes for such isolated misbehavior or unprofessional conduct may well be rooted in long-standing grievances between the management of the INS and its employees and that, therefore, the improvement of employee morale at the INS should be the top priority of any recommendation dealing with the professionalism of the service. In so arguing, I contended that any code of ethics and behavior should be equally applied to the executive and supervisory management of the INS as well as the employees, not simply to the latter.

On January 6, when the issues were discussed for the last time, again I insisted INS management be encouraged to be more sensitive to employee morale by improving pay scales and other conditions of employment. I offered specific language to this effect and the Commission unanimously adopted it.

In fact, my arguments are accurately reflected on pages 238 and 243 as to the capability, conscientiousness and sense of duty of INS employees. Yet on pages 57 to 58, unexplainably, the report drafters chose to cast aspersions on the integrity, dedication and decency of all INS employees. I reject this blanket condemnation of the overwhelming majority of dedicated civil servants employed by the INS.

Immigration Policy Goals

The Admission of Immigrants (III.) I reaffirm support for an immigration policy in the United States consistent with the nation's compassionate and humane traditions. Such policy should foster reunification of families and provide a haven for refugees from persecution, while taking a realistic view of the job opportunities and the needs of U.S. workers. A new immigration policy must also deal effectively and fairly with the problem of illegal immigration.

It is deplorable that the Commission did not reconsider these current policy goals, nor that it analyzed in sufficient depth the effects of current illegal immigration as was mandated by the law which created the Commission.

I am greatly disturbed by the staff's insistence on economic growth as a primary immigration policy goal. Immigration has not been used as a strategy for promoting economic growth since post-World War I, when we became a highly developed economy and world power; and it has never been a policy objective of U.S. immigration law, since it conflicts with our explicit, century-old goal of protecting U.S. workers.

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In fact, the replacement of the current immigration policy goal of protecting the labor market with that of economic growth is equivalent to a recommendation that we return to a numerically capped version of our first century's laissez-faire immigration policy.

I question the appropriateness of this radical departure from current immigration policy, particularly at a time when the gap between our disadvantaged and our advantaged workers is widening, when we face a deepening recession, rising unemployment, and a world economy that we can be sure will be troubled for many years to come.

Virtually all Americans today depend upon employment, either directly or indirectly, for their livelihood. Disadvantaged workers--minority group members, women, youth, older workers and the handicapped--are particularly vulnerable to job competition from immigrant workers, yet they are by definition also those most in need of labor-market assistance and protection.

At the very least, I strongly believe that a policy change of this magnitude requires a much clearer understanding of its specific objectives and a more thorough examination of its potential costs and benefits, including its impact on other national policy goals.

Concluding Remarks

Notwithstanding the foregoing concerns, I recognize that the mandate of the Commission was impossibly broad. It involved issues extremely controversial and certain to produce strong divergent views. Immigration policy is an exceedingly complex matter. Yet, many of the conclusions and recommendations contained in the draft report were the result of hard and conscientious work on the part of the Commissioners and staff. It would be irresponsible not to recognize publicly the value and usefulness of such findings.

I am greatly encouraged by, and wholly support, the concern of the Commission with illegal immigration and the key recommendations to deal with it--increased INS resources, professionalism of INS personnel, employer sanctions, legalization program, et al.

The votes on sanctions and improved identification mechanism suggest an emerging consensus that illegal immigration is sufficiently serious to warrant additional legislation and that the potential for discrimination is also serious enough to warrant development of a more secure identification mechanism to enable employers to readily determine the legal status of job applicants.

I deeply regret, however, that the late start of the Commission, bad timing (election year), and other problems prevented Commissioners from more extensive discussions, and a decision, regarding the kind of employer sanctions that should be enacted and the kind of identification mechanism that should support such legislation.

I fully support the unanimous vote for the legalization program and endorse the recommendations that it follow institution of enforcement measures, in order to discourage additional flows. I would have preferred that the Commission suggest a minimal period of continuous residence instead of leaving it up to the Congress (II.C.1.,3.)

By their votes the Commissioners appeared to reaffirm humanitarian goals of U.S. immigration policy, pursuant to the administration of relatives and refugees. This is highly encouraging. However, I was disappointed that in making our decision we were provided with little analysis of various possible policy goals and their applications.

While I support the concept of expanded legal immigration, I believe that a substantial increase at this time is both premature and unwise. In my judgment, it is essential that curbs on future flows and legalization of current residents must be dealt with first. There is need to absorb the full effect of a decade of large-scale legal immigration and refugee flow and to absorb illegals and their relatives before increasing legal immigration. For these reasons I do not favor the new immigration model (Table 7) which was voted on by a majority.

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Finally, I associate myself in full with the supplemental views submitted by Commissioner Ray Marshall, most particularly, his outstanding efforts and work in helping to clarify the problems associated with labor certification. I am convinced that real progress has been made in this very complex technical area of labor certification and hope that the President and Congress will lend their full support to the enactment of Secretary Marshall's recommendation, to improve and enhance the labor certification process.

APPENDIX P

STATEMENT OF COMMISSIONER CRUZ REYNOSO

The Commission's major recommendations, I respectfully submit, are not responsive to the needs of our Country. Many of the recommendations are important improvements in present law.* However, if I had the unfortunate choice of having to recommend all the Commission proposals (as a legislative packet), or none, I would recommend leaving the law as it is today. While I entertain the strongest feelings that our national immigration statutes and practices are not working, I conclude that the recommendations, as a whole, will work less well./

My Overall Concern

Congress must strive to structure a cohesive and realistic immigration policy. The ultimate criteria must be whatever is in the best interest of our Country. That interest will be served domestically by continuing the humanitarian goal of family reunification and at the same time fortifying the economic growth of our Country. In the international sphere a policy which promotes peace and stability serves our needs.

International realities affect immigration. Developing countries, many our neighbors in the Western Hemisphere, are undergoing unprecedented population growth, while the developed countries, including our own, are experiencing declining birth rates which result in projections of shortages in labor. Mexico, our immediate southern neighbor, by way of example, is expected to greatly increase its population (from 65 to over 100 million) by the end of the century. Meanwhile, continued economic factors --inflation, higher taxes, increased labor and material costs-are forcing American companies to relocate in developing countries and to join the growing number of multi-national corporations which know no national bounds.

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* The recommendations pertaining to rewriting the statute, and reorganizing INS, including its adjudicatory responsibilities, are particularly valuable.

/ I will file supplemental materials which, I understand will be attached to the Commission's staff report. In this statement, of course, I stress the points of disagreement.

Toward a Cohesive Immigration Policy--the undocumented, legalization, enforcement, legal migration, employer sanctions, temporary and H-2 workers.

We must recognize our special relationship with Mexico and other developing countries, particularly those nearby. Mexico, like Canada, is peculiarly tied to our Country by geography, interdependent economies and common histories. I regret that our Commission did not adequately consider whether we should have a special and close relationship with the Western Hemisphere respecting our immigration policies.

One facet of our proximity to Mexico is manifest. Perhaps one-and-one-half to three million Mexican immigrants* find themselves within our borders without proper documentation. This is not accidental. While our written statutes do not permit such entry, our de facto law has been, over the last decade, to encourage such entries. A combination of factors brought this about--lax enforcement of immigration laws, claimed need by United States businesses for a plentiful supply of unskilled cheap labor, adverse economic pressures within Mexico, and our implicit invitation to come. That is, the de facto law seems to please all the concerned pressure groups. However, the continuation of this de facto policy ought not be accepted. It has created a large group of persons outside the protection of our laws. No democracy can accept such an underclass of powerless human beings devoid of human rights.

The Commission's response, among others, is to "legalize" the undocumented (II.C.) I agree. Regrettably, the method recommended, I believe, is so defective as to make meaningless the proposed legalization. A legalization (amnesty or documentation) effort cannot succeed without an aura of confidence in the program among the undocumented and the religious and neighborhood organizations where such persons seek information (II.C.2.). In turn, this confidence will materialize only if (1) the undocumented perceive an affirmative and helpful point of view among those

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* Commission staff reports that the best studies conclude that between 3 to 6 million undocumented aliens reside in our country, half of whom came from Mexico.

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who will judge them, and (2) a risk-free method of determining status is prescribed. Other countries have sponsored "legalization" programs; in 1976 Australia, for example, reportedly attracted less than 20 percent of that country's undocumented. My own estimate is that a program structured pursuant to our recommendations will draw as few as 2 percent of our own. The reasons are varied.

First, the Commission has stressed that tough enforcement of immigration laws must perhaps precede, but at any rate go hand-in-hand with, the legalization program (II.C.3.). Thus, if an undocumented person comes forward in the good faith belief that eligibility exists, but guesses wrong, deportation lies in the offing (II.C.4.). No conclusion was reached by the Commission as to the grounds for exclusion in implementing legalization (II.C.1.). The goals of legalization manifestly would be frustrated by the application of most grounds for exclusion found in the statute. Thus, most undocumented are working people, the type who have made this country great; yet, because they are not monied an unsympathetic interpretation of the law could be made such that they be deemed persons likely to become public charges. Further, the Commission did not reach a conclusion on the period of United States residency required for legalization purposes (II.C.1.). No such residence requirement can be lengthy, nor can it ignore the migratory nature of some undocumented if the legalization program is to succeed. In short, on the crucial issues we have failed to make recommendations.

Second, the Immigration and Naturalization Service (INS) will apparently be in charge of the program. The INS, right or wrong, is viewed by the undocumented and, importantly, by the representatives of religious and other organizations which aid the undocumented as "the enemy," a hopelessly anti-alien agency. Unless there is absolute confidence in the administrative mechanism the program will fail. There is no trust in INS.

Third, the Commission report seems to disfavor the 50 percent Mexican undocumented and favors the 50 percent non-Mexicans. The tone of its discussion is one of alarm respecting the Mexican undocumented immigrants. It offers voluntary departure as an option to amnesty and the "enforcement" programs stress border control. It approves current enforcement priorities. In fact, most of the entire enforcement budget goes to abate the flow of the 50 percent Mexican undocumented immigrants, and only a small portion to deal with the non-Mexican (much of it European) undocumented.*

The effect of the Commission's proposals will be to drive the undocumented, particularly the Mexican undocumented immigrant, further underground.

The goal should be to have every undocumented immigrant come forward. Those who are eligible should be documented. Those who are not, should be offered temporary status with the opportunity, after a few years, of qualifying for permanent residence.

Our overall immigration policy needs to be better structured to avoid another upward surge of the numbers of undocumented. Every witness who testified at our public meetings, addressing this issue, agreed that the borders with Canada and Mexico cannot be closed. I must stress, as did witnesses, that there is no easy (or quick) solution to reducing the flow of aliens who unlawfully enter our Country. Some of the Commission's recommendations (helicopters at the border) appear too facile (II.A.1.). The issue is more fundamental.

Our overall immigration model (the statute) should permit increased legal migration from the Western Hemisphere, particularly Mexico. I had hoped the new Independent category of immigrants, now set aside for "new seeds," would be a category which could respond to the pressure at hand (II.D.5.).

Many undocumented aliens come from Latin America, fleeing dictatorial oppression and the chaos of civil war. Yet, our government has been reluctant to recognize their legitimate claim to asylum. Litigation, like testimony before our Commission, has pinpointed the dual standards used by our Country which permits entry of many tens of thousands of Cubans, Russian Jews and others who are politically favored by our national

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* For example, of those apprehended in 1979, 93 percent were Mexican and 70 percent were non-Mexican.

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administrations, but at the same time rejects Haitians and San Salvadoreans. The former are considered documented, the latter undocumented. We, as a government, thus help create our own problems.

The laws which protect United States workers should be vigorously enforced (II.B.2.). One of the attractions of undocumented immigrants for employers is the cheapness and docility of the workers. This incentive would be markedly reduced if all workers had to be paid equally and treated with respect. A witness in our Los Angeles hearings, an employee of the State of California, testified that his office balanced strong enforcement of the law in the garment industry with the reality that the industry might move out or close down if enforcement were vigorous. That type of frankness is not often heard when undocumented immigrants are discussed. The reality, nonetheless, is that by actions of our government we countenance the very factors which encourage employer practices of hiring the undocumented.

Congress has failed to fund programs presently in place which would reduce the number of undocumented immigrants without intrusion into the lives of every American. For example, when foreign visitors arrive a paper (I-94) is given them by the United States authorities; another is turned in when the visitor leaves. The government has not monitored those documents to see who "forgot to leave the United States"--the reasons can be variously stated as "lack of money" or "priority at border control," but a program, already at hand, has not been utilized (II.A.6.).

Vigorous and professional (as well as legal and constitutional) enforcement of immigration laws will help immeasurably. I agree with the Commission recommendations that we need better-trained and better-paid border patrol agents as well as vigorous interior enforcement (II.A.1,2). I reject the notion that "sensor systems, light planes, helicopters, night-viewing devices, a mobile task force, and increased border personnel" will do the job. This sounds like a militarized zone. The best approach is to reduce the pressure to cross the border or "forget to leave."

The final Commission response to the undocumented is the proposal that legislation make it illegal for employers to hire undocumented immigrants (II.B.1.). My objection is several-fold. (1) Such legislation would create a large number of employer lawbreakers. The recordkeeping and reporting requirements are extreme. (2) To minimize costly business disruption and to protect themselves from liability, employers will employ only "safe hires," those who appear to be citizens; the result will be that those who appear "foreign" in color, language or customs will suffer discrimination. It is they who will be called upon to display their badges of citizenship to be admitted to work. (3) Any system of universal identification, whether by card or presently existing documents, intrudes deeply into the American tradition. Unlike most European countries, we do not have a national police force or any other device which permits our national government to keep close tabs of each citizen or foreigner and their movements. The suggestions would be, in my view, a step toward the creation of such a system.

While employer sanctions and employee identification can be utilized to assist in the control of the undocumented, the cost to this nation's democratic traditions, the cost of discrimination against its minorities, the intrusion into the business sector, is too high a cost. We should not even consider such a drastic step at this juncture in our history. The less intrusive steps, which we have not implemented, some of which I mention above, may be sufficient to reduce the number of undocumented to manageable proportions.

A word needs to be said about temporary workers, including "H-2 workers." I voted for the Commission recommendation (VI.E.), but apparently my interpretation differs from that of the writers of the Commission report. The option of a large-scale temporary worker program did not receive a single affirmative vote. Our vote on the H-2 program included the statement: "The Commission believes that government, employers, and unions should cooperate to end the dependence of any industry on a constant supply of H-2 workers." The only industries, both seasonal, which presently have a dependence on H-2 temporary workers are agricultural-apples in the Eastern states and sugar cane in Florida--and that dependence is for approximately 20,000 workers. It seems unfair for government policy to foster such dependence and then cut off the supply without notice. However, long-term dependence cannot be an acceptable national policy and expansion would be a natural disaster. A U.S. government study summarizes my feelings:

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> Despite the best intentions of governments, employers, and individuals, guest worker programs wind up providing short-term economic benefits while creating future problems in language, schools, housing, integration and human rights. . . . A nation struggling to promote equal opportunity and a respect for human rights would be hard put to deal with current patterns of illegal immigration by importing large numbers of Hispanics and relegating them to a second class status. (U.S. Department of Labor, "Guest Worker Programs: Lessons from Europe")

No expert I heard at the hearings disagreed with the above assessment (those who disagreed were public officerholders with considerable employer constituencies who wanted large-scale cheap labor).

Citizenship Requirement: Language (IX.)

The last concern I want to express deals with naturalization. It illustrates, I believe, the easy but erroneous, road this Commission has traveled. The Commission report quotes favorably from Webster's notion of language--that it is a unifier of national bonds--and recommends continued use of the English-language requirement for citizenship.* The Commission, unknowingly, misinterprets the character of our national union, the reality of our history, and the diversity of our people. Americans are not now, and never have been, one people linguistically or ethnically. American Indians (natives) are not now, and never have been like Europeans. By the treaty which closed the Mexican American war our Country recognized its obligation to protect the property, liberty and religion of the new Americans. In short, America is a political union--not a cultural, linguistic, religious or racial union. It is acceptance of our constitutional ideals of democracy, equality and freedom which acts as the unifier for us as Americans.

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* I regret that we never had a chance to discuss this issue at a Commission meeting. The vote on the alternative recommendations was by mail. An in-depth discussion, I would hope, would have persuaded more than two Commissioners to vote in favor of eliminating the language requirement.

With respect to language the California Supreme Court said it well in ruling that English may not be a requirement for voting among those who speak Spanish:

"We cannot refrain from observing that if a contrary conclusion were compelled [that the California Constitution could require knowledge of the English language before a citizen could vote] it would indeed be ironic that petitioners [the Spanish-speaking citizens], who are the heirs of a great and gracious culture, identified with the birth of California and contributing in no small measure to its growth, should be disenfranchised in their ancestral land, despite their capacity to cast an informed vote." (Castro v. State of California [1970] 2 Cal.3d 223,243.)

Resident aliens (lawful immigrants) pay taxes, obey the laws our legislatures pass, and are called upon (by the military draft) to give their lives for our Country in time of war (whether they speak English or not). They have all the obligations even though they do not speak English, yet we deny them full participation in our democratic decision-making, casting a vote, without a knowledge of English.

Of course, we as individuals would urge all to learn English for that is the language used by most Americans, as well as the language of the marketplace. But, we should no more demand English-language skills for citizenship than we should demand uniformity of religion. That a person wants to become a citizen and will make a good citizen is more than enough.

Every study I have read concludes that language requirements have been used to discriminate. Our early naturalization laws had no language requirement. We should do today as was done before the "nativism" (an early nice word to describe ethnic and racial prejudice) of the 19th Century set in; we should welcome the new arrivals with open arms, to all the obligations and the privileges of being full Americans.

The other requirements of naturalization--that applicants study the Constitution, be of good character and be in this Country five years*--strike me as sound.

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* Early laws required residence of two years.

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STATEMENT OF COMMISSIONER PETER W. RODINO

I would like to make brief remarks outlining my basic positions on significant issues before the Commission.

With regard to legal immigration, I believe the essential elements of openness, fairness and generosity are carried forward by the Commission's basic recommendations.

I completely agree with the Commission's continuing emphasis on family reunification and equality of opportunity (II.C. and III.D), and I believe the slight increase in immigration that has been recommended is eminently justified by domestic and worldwide conditions (III.A.2.).

I question, however, whether sufficient attention has been paid to the direct relationship between per-country ceilings and the achievement of cultural nationality diversity, a primary goal of our immigration policy over the past two decades (III.C.6.).

In fact, I would favor a uniform increase in the per-country limits and/or the establishment of mechanisms to adjust the limit upward for certain countries based on an unusual demand for family reunification or special foreign policy considerations.

Along these lines, I also advocate flexible immigration ceilings, which will enable this country to adjust our policy based on economic and employment conditions in this country.

The best device for accomplishing this objective is the Immigration Advisory Council (III.E.),which has been unfortunately disapproved by a majority of the members of this Commission.

I understand and respect the views of my colleagues, but I strongly believe that we must have a flexible immigration policy so that this country can respond to rapidly changing national and international events.

Concerning illegal immigration, the Commission properly recommended employer sanctions as an appropriate vehicle to address this serious national problem (II.B.1.). In making similar recommendations in the past, the Judiciary Committee and the House did not do so in the belief that such sanctions would eliminate the undocumented alien problem overnight.

On the other hand, because employers, or more precisely, the availability of employment are primarily responsible for this migratory phenomenon, it is imperative that employers be made a part of the solution.

This, however, cannot be done without giving employers and the government the proper tools to prevent the hiring of undocumented aliens. This should not, in my judgment, include a new national identifier in the form of a work permit system or a uniform identity card.

It should include, however, post-employment inquiry and verification of employee status based on existing identifers or on the development of a more secure verification system. I strongly believe that the technology exists to develop an effective system of this nature--and--a system which will not violate the civil liberties of Americans.

With regard to amnesty, I believe it regrettable that the Select Commission did not develop a precise and equitable formula to regularize the status of undocumented aliens (II.C.1.). Instead, the Commission merely chose a retrospective cutoff date for eligibility. I was hopeful that the Commission would have provided the Congress with a definitive recommendation on this most significant subject. Since it did not do so, I was unable to cast my vote regarding the status of the residual group of undocumented aliens (II.C.4.).

In conclusion, it should be noted that the issues that have troubled this Commission have been on the agenda of the Judiciary Committee and general public for a decade. I am, therefore, hopeful that the decisions which now have been made will be translated into meaningful and effective legislative action by the 97th Congress.

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STATEMENT OF COMMISSIONER ALAN K. SIMPSON

I have considered it a great honor and privilege to serve as a member of the Select Commission on Immigration and Refugee Policy. I have come to have high personal regard for all of my 15 colleagues on the Commission--a diverse and determined group indeed!--as well as for the exceedingly bright and capable staff. It has been my distinct privilege to share their time, their talents and their friendship.

OVERVIEW OF IMMIGRATION AND REFUGEE POLICY

Standard of Value: The National Interest

The process for developing an immigration and refugee policy for the United States of America should begin with a clear decision about the standard of value to be applied in choosing among alternative policies and courses of action.

Should the United States immigration and refugee policy be determined by the national interest standard of what best promotes the welfare of the majority of Americans and their descendants? Or by the humanitarian standard of what best promotes the welfare of those persons living abroad who are less fortunate than most American citizens? Or rather by some combination or modification of these or other standards--such as the humanitarian standard of what best promotes the interest of a relatively few individuals living in America who wish to bring to this country relatives living abroad?

I feel that the paramount obligation of the government of a nation, indeed the very reason for its existence, is to promote the national interest--that is, the long-term welfare of the majority of its citizens and their descendants.

An elected or other federal official must not attempt to impose his own humanitarian or other moral values on the American people. Immigration policy should be based on what would actually promote the happiness of the American people, not as federal officials might wish they were or think they ought to be, but as they are now and are likely to be in the future.

In my view the interest of American citizens and their descendants includes the maintenance of specific benefits such as freedom, safety, an adequate standard of living, and political independence and stability. It also includes the preservation of cultural qualities and national institutions which contribute to these specific benefits--and the absence of which in many other countries is one of the direct causes of their relative lack of such benefits.* In addition, the American people have an even more fundamental interest: the maintenance of the attributes of America which make it familiar to them and, uniquely, their homeland, as compared with foreign lands, which they may well respect and esteem highly, but which are not "home" to them.

The impact of immigration on the national interest depends on the number and characteristics of immigrants and on how well they assimilate the values and way of life of the American people. Some of the potential impacts are economic and could be expressed in dollars. Others are not economic but may relate even more importantly to the well-being of the American people.

It is my firm view that humanitarian goals should be a part of U.S. immigration policy. If a humanitarian action would also promote the national interest, then, of course, it should be warmly embraced. If a humanitarian action would have a neutral effect on the national interest, then it still could be properly taken if supported by a majority of the American people and if not harmful to the interests of individual Americans.

The moving words on the Statue of Liberty are cited in nearly all discussions of U.S. immigration policy. The ideas expressed there are most appealing and are certainly consistent with the traditional hospitality and charity of the American people. It is imperative, however, that Americans perceive that this great country is no longer one of vast, undeveloped space and resources, with a relatively small population.

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* Two excellent discussions of this subject are: The Civic Culture --Political Attitudes and Democracy in Five Nations (1963) by G.A. Almond and S. Verba, and The Achieving Society (1961) by D.C. McClelland. These books discuss the provocative correlation between a society's customs, values, and other cultural traits and, respectively, its ability to sustain stable democratic institutions and its facility for economic development.

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In that earlier time, the nation could welcome millions of newcomers. Some brought skills. Many others brought few skills, but were willing to work. In a smaller America with a simpler, labor intensive economy and a labor shortage, that was often quite enough --that, plus their great drive to become Americans.

Immigrants can still greatly benefit America, but only if they are limited to an appropriate number and selected within that number on the basis of traits which would truly benefit America.

Compassion is a rich part of the America psyche and culture. I believe Americans feel it more deeply than any other people. Yet if elected and other government officials do not take care to control it in themselves and protect the national interest, not only will they fail in their primary official duty, but there is a very great risk that in the long run the American people will be adversely affected to a degree that they will be unable or unwilling to respond at all, even when the need for a hospitable America is desperate. I refer to this potential unwillingness to respond as "compassion fatigue." The signs are all around us that this is already developing.

Immigration Today

Numbers. New legal entries of immigrants and refugees for fiscal years 1977-1980 totaled, respectively, about 400,000; 500,000; 525,000; 675,000.* Emigration may be as high as 30% of the number of new immigrants (not counting refugees). Although the exact figure is unknown, net illegal immigration may well number in the hundreds of thousands per year./

In a 1980 study by Dr. Leon F. Bouvier, who served as research demographer on the Select Commission staff and now is with the

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* The 1980 figure does not include the more than 135,000 Cubans and Haitians who were given a special legal status by President Carter.

/ Estimates of the number of illegal immigrants already in the United States vary. The consensus range is 3.5 to 6 million as of 1978 according to the study done for the Select Commission by senior U.S. Census demographers, plus the net illegal inflows since that time.

Population Reference Bureau, Washington, D.C., "The Impact of Immigration on the Size of the U.S. Population," he estimated that even if (a) net immigration, illegal as well as legal, equals 750,000 per year; (b) the fertility rate of the existing population and its descendants remains at its present low level (which seems unlikely); and (c) the fertility rate of new immigrants and their descendants immediately declines to that of the present population as a whole (which seems even less likely); then the U.S. population in the year 2080 will be 300,000,000, one-third of which will consist of post-1979 immigrants and their descendants.

The problems which may be caused by excessive population growth include: additional cost of government services, not merely transfer programs such as welfare and health care, but also all services which depend on the size of the population served, such as education, fire fighting, law enforcement, and sanitation; overcrowding of scarce public facilities, such as parks and roads; increased cost and scarcity of commodities of limited supply, such as urban housing and domestic natural resources; greater environmental damage; greater use of imported oil and other natural resources, with the accompanying national security risks; higher food consumption and, therefore, a decrease in food exports and in the associated diplomatic and balance of payments benefits.

Ethnic Patterns. I realize that I am about to enter into a very sensitive area and there is some risk that what I will say may be misunderstood. So, at the outset, let me emphasize that I believe no individual applying to this country lawfully in search of freedom and opportunity and anxious to adapt to this country's political institutions and values should be discriminated against because of color, nationality or religion, as we have sometimes done in the nation's past. I am very much aware of the great contributions made by various ethnic groups to the well-being of all Americans and especially in my own state where 15 percent of the population is of Hispanic origin. How could one be insensitive to the contributions of these people?

As previously stated, the Bouvier study found that, given a total annual immigration of 750,000, at least one-third of the U.S. population in the year 2080 will consist of post-1979 immigrants and their descendants. This finding has profound implications because current immigration flows to the United States are

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substantially different from past flows (which, of course, produced the present population) in two significant ways, ethnicity and language concentration.

The following table sets forth the major source countries for legal immigration in recent years together with their shares of new permanent residents. The total fertility rate* for each country is set forth within parentheses after the name. The 1980 fertility rate for the United States is 1.8.

1977			1978			1979	
Cuba	(2.5)	15.1%	Mexico		15.3%	Mexico	11.3%
Mexico	(5.2)	9.5	Vietnam	(5.8)	14.7	Philippines	9.0
Philippines	(5.0)	8.5	Philippines		6.2	Korea	6.4
Korea	(3.6)	6.7	Korea		4.9	China & Taiwan	5.3
China & Taiwan	(2.3) (3.1)	4.3	China & Taiwan		3.5	Vietnam	4.9
India	(5.3)	4.0	India		3.5	India	4.3
Canada	(1.9)	2.8	Cuba		3.2	Jamaica	4.3
United Kingdom	(1.7)	2.7	Dominican Republic		3.2	Dominican Republic	3.8
Dominican Republic	(5.4)	2.5	Jamaica		3.2	Cuba	3.4
Jamaica	(3.7)	2.5	Canada		2.8	United Kingdom	3.0
		58.6%			60.5%		55.7%

(This table does not reflect the post-1979 increases in refugee flows of over 160,000 Indochinese and over 20,000 Soviet Jews. Nor does it reflect the 1980 influx of more than 130,000 Cuban and Haitian "boat people," who were given special entrant status.)

With respect to illegal immigration, the largest single source country is Mexico, estimated to supply 50-60%, with other parts of Latin America supplying 10-15%, and the Caribbean area, 5-10%.

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* "Total fertility rate" is a measure of the average number of children born to women aged 15-45, adjusted to reduce the influence of the differences between countries in the age distribution of their female populations.

To a large extent, the effect of such patterns will depend upon the degree to which immigrants and their descendants assimilate to fundamental American public values and institutions (see the following section on Assimilation).

The present immigration flow differs from past flows in one other significant way. Immigration to the United States is now dominated to a high degree by persons speaking a single foreign language, Spanish, when illegal immigration is considered. The assimilation of the English language and other aspects of American culture by Spanish-speaking immigrants appears to be less rapid and complete than for other groups. A desire to assimilate is often reflected by the rate at which an immigrant completes the naturalization process necessary to become a U.S. citizen. A study by the Select Commission staff indicates that immigrants from Latin America naturalize to a lesser extent than those from other regions.* In part the apparently lower degree of assimilation may be due to the proximity to and the constant influx of new Spanish-speaking illegal immigrants from Latin America, many of whom regard their stay as only "temporary" and thus may not feel the need or desire to learn English or otherwise assimilate; and finally the greater tolerance for bilingualism and "biculturalism" in recent years, at least among a majority of legislators, who have adopted government policies which seem actually to promote linguistic and cultural separatism, policies such as the promotion of bilingual/"bicultural" education and foreign language ballots.

Under existing law and policies such patterns are likely to continue or be accentuated since the pressures for international migration are likely to increase over the coming decades, especially from regions which already dominate U.S. immigration flows.

Assimilation. Although the subject of the immediate economic impact of immigration receives great attention, assimilation to

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* A sample of those granted permanent resident status in 1971 was examined. Of those of Mexican origin who remained in the U.S. at the end of 7 years, only 5% had naturalized. For the entire region of South America the rate was 24.6%, for Europe 42.6%, and for Asia 80.3% (excluding China, India, Korea, and the Philippines, whose rates were, respectively, 73.8%,, 67.8%, 80.9%, and 67.6%).

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fundamental American public values and institutions may be of far more importance to the future of the United States. If immigration is continued at a high level and yet a substantial portion of the newcomers and their descendants do not assimilate, they may create in America some of the same social, political and economic problems which existed in the country which they have chosen to depart. Furthermore, as previously mentioned, a community with a large number of immigrants who do not assimilate will to some degree seem unfamiliar to longtime residents. Finally, if linguistic and cultural separatism rise above a certain level, the unity and political stability of the nation will in time be seriously eroded.

Economic Impact. Adverse economic impacts do occur--not only because of illegal immigrants, but also due to refugees and legal immigrants who are admitted under family reunification preferences, which do not require a screening for labor market impact.* Adverse impacts include unemployment and less favorable working conditions for U.S. workers, together with the related costs such as welfare or other transfer payments to adversely affected U.S. workers or their families. The cost of welfare and other government services to the new immigrants and refugees themselves must also be considered.

Adverse job impacts are most likely to affect low-skilled Americans, who are the most likely to face direct competition. Direct or indirect job displacement of low-skilled Americans, a very high percentage of whom are now unemployed, is a very serious issue. Not only does such unemployment bring economic distress upon the displaced Americans and their families, but it may also be a source of increased social tension within our society.

Obviously many, perhaps most, goods and services could be sold in the United States at a lower price if employers were able to employ anyone from abroad willing to work for less. This also can result in exploitation. If there were no restrictions on this practice, the adverse impacts described would occur to a much greater degree than at present.

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* See the discussion of this and other immigration issues by Senator Walter D. Huddleston (D.-Ky.) in 126 Cong. Rec. 16462-16473 (Daily Ed., Dec. 12, 1980).

COMMENTS ON SELECT COMMISSION REPORT

Section I. International Issues.

In this section of the Commission Report a reference is made to "global inequities."

I think it is well to remember that the United States did not create the economic problems of less-developed nations and that without the assistance and trade of a prosperous United States these nations might be far worse off.

Poverty in less developed nations is due to population growth which is too high and economic growth which is too low. World poverty could not be solved or even reduced for long by mass migration to the United States or to other prosperous, free countries.

If we wish really to assist less fortunate people abroad, our major aim should be to assist them to improve the quality of life in their own country. In my view, the best gift of the heart that the United States can provide to the world is not unlimited immigration--which would not solve world poverty--or financial aid which is frequently ineffective often because of governmental policies which are responsible for the poverty. Rather, it is the clear communication to the people of these countries of the basis for our success. It is no coincidence that America has been a symbol of both freedom and prosperity. These two are intimately connected and both rest on certain traditional values and cultural traits. This is a message that should be communicated to the world in a much more effective way than we have been able to do to date.

Section II. Illegal Aliens.

Legalization. The major argument for an amnesty program which I find convincing is based again on national interest. How can the United States derive the most benefit from the immigration enforcement dollar? It is not likely to be through trying to determine the legal status of longtime residents and deporting one by one those found to be illegal--at least not unless the United States develops more appropriate methods for the discovery of such persons.

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I support an employer sanctions and worker identification program (II.B.l.). That would constitute such a "more appropriate method." Furthermore, after such a program had been effective for a reasonable period of time, many illegal aliens would have found it impossible to find employment and voluntarily returned to their country of origin.

With respect to the "grounds of exclusion" which should be applied in any amnesty program (II.C.l.), I feel strongly that they should include a modernized version of nearly the full current list (see comment on Section VIII). I do not believe that it would be appropriate to use the brief list which is applied to refugees, whose interests in coming to the United States are frequently of an emergency nature.

No amnesty program should be adopted until effective additional enforcement measures are in place--not merely "implemented," but shown actually effective in substantially eliminating illegal immigration. It was in this context that I supported the concept (II.C.3.).

Section III. The Admission of Immigrants.

1. Annual Numerical Ceiling. I strongly believe that the United States will not be able to achieve control over immigration without an absolute annual ceiling (III.A.l.).

At the present time there are two major categories which are not subject to firm annual ceilings: immediate relatives of U.S. citizens (spouses, minor children, and the parents of adult U.S. citizens) and refugees. Admissions under the former category have increased from 60,016 in 1969 to 138,178 in 1979. Refugee admissions have increased from 55,000 in 1969 to 231,000 in 1980. Refugee admissions for 1981--the first full year under the Refugee Act procedure--are estimated at 217,000.

Refugees are in theory subject to a 50,000 limit on "normal" flows, but this may be ignored if the President desires and if he "consults" with the Congress. However, no affirmative approval by Congress is necessary and no veto is possible. As indicated, in the first full year of the new Refugee Act procedures the 50,000 level was vastly exceeded.

Under existing law the United States has little prospect of controlling admissions under these two categories. Immediate relative admissions are expected to steadily increase. Given the millions of refugees in the world today, refugee admissions could probably greatly exceed the 50,000 figure indefinitely unless some statutory limit is imposed. Not only is there no effective mechanism for Congress to determine the proper figure, but it may continue to be politically most difficult for a member of Congress to risk being perceived as "mean," "uncaring and unloving," "Neanderthal," or "racist" by speaking up for specific reductions in refugee numbers in a particular year when particular victims can be identified.

One possible approach would involve an absolute annual ceiling plus an individual limit for refugees, which could be exceeded, if at all, only in genuine emergencies by some type of meaningful Congressional expression of support. Admissions of "immediate relatives" above a base level and emergency refugee admissions, would have to be compensated for by reductions in admissions under each of the other numerically limited categories.

2. Basic Structure and Numbers.

Categories. With respect to a numerically limited family reunification category, I feel the limited numbers available should be reserved for the sons and daughters of U.S. citizens not already covered, plus the nuclear family (spouse and minor unmarried children) of permanent resident aliens (III.C.2.,3.). If other relatives are included, the limit for the category could not be kept to a reasonable size without creating the problem of backlogs even in the just described groups, which I believe should have preference. In particular I believe that including brothers and sisters of U.S. citizens (fifth preference) would create increasing problems, as illustrated by the large increases in applications for fifth preference admission in recent years (III.C.4.).

The "independent" category should be selected by a simplified version of the "point-systems" used by Canada and Australia (III.D.6.). Points could be given for traits valuable to the economy or culture (such as vocational preparation, experience and achievement; a job offer; designated occupations; and possibly the intention to invest); and those which would ease assimilation (such as English-language ability and education).

APPENDIX B

Numbers. In my view, admissions under the numerically limited family reunification category should not substantially exceed the present level of admissions under the first (unmarried sons and daughters of U.S. citizens), second (spouse and unmarried sons and daughters of permanent resident aliens), and fourth (married sons and daughters of U.S. citizens) preference categories. This is currently 120,000-130,000 per year (III.A.2.).

Although I favor increasing the ratio of "independent" to "family reunification" immigrants, I do not believe that the total independent admissions should substantially exceed the current levels of admission under the third (members of the professions or persons of exceptional ability in the sciences and arts), sixth (skilled and unskilled workers in short supply), and nonpreference categories, plus possibly the fifth (brothers and sisters of U.S. citizens over 21 years of age) preference category, for which I would provide no equivalent category, thus freeing its current admission levels for other categories.

I believe the annual ceiling for total permanent admissions should be no larger than 400,000-550,000. Until the net inflow of illegal immigrants is substantially reduced, the range should probably be lower. As pointed out in the Bouvier study, if total net immigration (illegal plus legal, less emigration) is as high as 500,000 per year and the conservatively low fertility rate assumptions referred to earlier are accurate, U.S. population in the year 2080 will have increased to nearly 270 million persons.

Per-Country Ceilings. Under present law, admissions from a single country under the numerically limited preference categories are limited to 20,000 per year. This is intended to prevent domination of immigration by a few countries. I agree with that policy, although even with per-country ceilings a few countries do indeed dominate U.S. immigration.

The Select Commission majority recommends that per-country ceilings not be applied to spouses and minor children of permanent resident aliens within the numerically limited family reunification category (III.C.6.). I voted with the majority. After further reflection, however, I have concluded that per-country ceilings should apply to all numerically limited categories. To do otherwise can only have the effect of increasing the dominance by a few countries of immigration to the United States. Not only would this fail to serve U.S. interests domestically, but there could also be adverse international relations consequences as well, as the State Department has pointed out. If the "high demand" countries which now dominate immigration are given an even higher proportion of the total, then other countries would necessarily receive a lower proportion.

Indeed, I believe consideraton should be given to extending per-country ceilings to the numerically unlimited family reunification category, perhaps by subtracting the number of admissions under that category, in excess of a certain level, from the per-country ceiling in effect for other categories.

Section IV. Phasing-in New Programs.

Phase-in should not be biased in favor of countries with backlogs or countries with any particular pattern of immigration, such as a greater ratio of family applicants to independent applicants. The result should not be to repeal per-country ceilings retroactively for countries with backlogs, adding further to the domination of immigration by high-demand countries.

Section VIII. Legal Issues.

Exclusions (VIII.D.1.). I support efforts to modernize the statutory language listing the grounds of exclusion and to eliminate any obsolete or redundant grounds, but I cannot support efforts which would eliminate entirely as grounds of exclusion characteristics which the American people deem to be offensive.

Limits on Deportation (VIII.C.1.). I do not believe the phrase "extreme hardship" should be changed to "hardship." It seems evident to me that nearly anyone facing deportation could show a potential hardship.

With respect to proposals to apply a form of "statute of limitations" to deportation (VIII.C.2.),my view is that the policy of the statute of limitations does not apply to deportation. In the criminal law, a statute of limitations prevents prosecution and punishment after a certain period of time following the past act which constitutes the offense. Deportation is not a penalty, which is intended to punish for past offense. Deportation represents a judgment that certain persons are unacceptable for presence in the U.S., because they currently represent a threat or because they are otherwise regarded as currently undesirable by the American people. Past behavior may well be relevant to both of these reasons for such a judgment.

CONCLUSION

I realize that certain of my views may engender a vigorous reaction. They represent what to me is part of a constructive dialogue. I trust they might be reviewed by my colleagues in that same fashion. I firmly believe that the work product of this Commission will serve as a basis of discussions and legislation for many years to come. I am sincerely proud to have been a part of it all.

APPENDIX C

ACTION REQUIRED ON RECOMMENDATIONS

RECOMMENDATION	ADMINISTRATIVE ACTION	CONGRESSIONAL ACTION	
		LEGISLATION	APPROPRIATION
I.A.	X		
I.B.	X		
I.C.	X		
I.D.	X		
II.A.1.	X		X
II.A.2.	X		X
II.A.3.	X		
II.A.4.	X		
II.A.5.	X		X
II.A.6.	X		X
II.A.7.	X		X
II.A.8.	X		X
II.B.1.	X	X	X
II.B.2.	X		X
II.C.1.	X	X	X
II.C.2.	X		X
II.C.3.	X		X
II.C.4	X		X
*III.A.1.			
III.A.2.	X	X	X
III.B.1.		X	
III.C.1.		X	
III.C.2.		X	
III.C.3.		X	
III.C.4.		X	
III.C.5.		X	
III.C.6.		X	
III.C.7.		X	

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*Requires no action.

ACTION REQUIRED ON RECOMMENDATIONS

RECOMMENDATION	ADMINISTRATIVE ACTION	CONGRESSIONAL ACTION LEGISLATION	CONGRESSIONAL ACTION APPROPRIATION
III.D.1.		X	
III.D.2.		X	
III.D.3.		X	
*III.D.4.			
III.D.5.		X	
III.D.6.	X	X	X
III.D.7.		X	
III.E.1.	X		
IV.	X	X	X
V.B.1.	X		X
V.B.2.	X		
V.B.3.	X		
V.B.4.	X		X
V.B.5.	X	X	X
V.C.1.	X	X	
V.C.2.	X		
V.C.3.	X	X	
V.C.4.	X		
V.C.5.	X		
V.C.6.	X		
V.C.7.	X		
V.D.1.	X		
V.D.2.	X		
VI.A.1.		X	
VI.B.1.	X		X
VI.B.2.	X		X
VI.B.3.		X	
VI.B.4.	X		
VI.B.5.	X		

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*Requires no action.

APPENDIX C (continued)

		CONGRESSIONAL ACTION	
RECOMMENDATION	ADMINISTRATIVE ACTION	LEGISLATION	APPROPRIATION
VI.D.1.		X	
VI.D.2.	X		
*VI.D.3.			
*VI.D.4.			
VI.E.	X		
VI.F.		X	
*VII.A.			
VII.B.1.	X		
VII.B.2.	X	X	
VII.B.3.	X		
VII.C.1.		X	X
VII.C.2.	X		X
VII.D.		X	
VII.E.	X		X
VII.F.	X		
VIII.A.1.		X	
VIII.A.2.		X	
VIII.A.3.		X	
VIII.A.4.	X		
VIII.B.1.		X	
VIII.B.2.	X	X	X
VIII.C.1.		X	
VIII.C.2.		X	
VIII.D.1.		X	
VIII.D.2.		X	
IX.		X	
X.		X	

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*Requires no action.

APPENDIX D

EVOLUTION OF KEY PROVISIONS RELATING TO IMMIGRATION

	PRE-1952	1952	1965	1976	RECOMMENDATIONS OF THE SELECT COMMISSION
GROUNDS FOR EXCLUSION	• Mental and physical defects • Immoral persons • Public charges • Criminals • Narcotics and immigration law violators • Anarchists • Contract laborers • Specific races (Orientals)	• Added narcotic drug addicts, aliens using fraud or misrepresentation to enter, certain other criminal and immoral persons • Removed all racial barriers • Provided relief for certain otherwise excludable relatives of U.S. citizens or resident aliens	• Deleted epilepsy; added sexual deviation • Provided relief for certain otherwise excludable relatives of U.S. citizens or resident aliens	• Foreign medical graduates wishing to practice or receive training in the United States[1]	• Congress should reexamine the grounds for exclusion currently set forth in the INA
NUMERICALLY RESTRICTED IMMIGRATION					
Annual Ceilings	• Approximately 150,000 per year, with quotas for each nationality based on the number of persons of their national origin in 1920	• Approximately 150,000 per year, national quotas based on 1/6 of 1 percent of foreign-born population in 1920, with at least 100 visa numbers per country	• 170,000 Eastern Hemisphere with 20,000 limit per country • 120,000 Western Hemisphere on first-come, first-served basis	• Extended 20,000 per country limit to Western Hemisphere[2]	• Increase worldwide ceiling to 350,000, with an additional 100,000 visas available annually for the first five years, raising the ceiling to accommodate backlogs • Remove per-country ceilings on spouses and minor children of permanent resident aliens
Preference System	• 1st--Parents of U.S. citizens 21 or over, certain husbands of citizens, immigrants with agricultural skills (50%) • 2nd--Wives and unmarried children of resident aliens (50%)	• 1st--Immigrants of special skill or ability and their spouses and children (50%) • 2nd--Parents of U.S. citizens (30%) • 3rd--Spouses and children of resident aliens (20%) • 4th--Other relatives of U.S. citizens (at least 25%, unused numbers from above) • Nonpreference (preferences modified in 1959)	• 1st--Adult unmarried children of U.S. citizens (20%) • 2nd--Spouses, unmarried children of resident aliens (20%) • 3rd--Immigrants in professions (10%) • 4th--Married children of U.S. citizens (10%) • 5th--Brothers and sisters of U.S. citizens (24%) • 6th--Other needed workers (10%) • 7th--Conditional entrants (6%) • Nonpreference (any unused numbers)	• Extended preference system to Western Hemisphere • 3rd preference changed to require job offer • 5th preference changed to include only siblings of U.S. citizens 21 or over	• Establish separate admissions categories for family reunification and independent immigrants (selected through labor-related criteria) • Add certain parents of permanent resident aliens over the age of 60 • Create subcategories for immigrants with exceptional qualifications, investors and other independent immigrants
NUMERICALLY UNRESTRICTED IMMIGRATION	• Wives and children of U.S. citizens • Clergymen and their families • Persons who had been U.S. citizens • Natives of the Western Hemisphere, their spouses and children • Professors of educational institutions	• Added husbands of U.S. citizens, certain employees of U. S. government abroad • Removed professors of educational institutions (Certain groups of immigrants and refugees added later)	• Added parents of U.S. citizens at least 21 years of age • Removed natives of the Western Hemisphere and their families	• Added Cuban refugee adjustments	• Add unmarried sons and daughters of U.S. citizens (previously first preference) • Add grandparents of adult U.S. citizens

LABOR CERTIFICATION	• No explicit protection of the domestic labor market	• Aliens seeking entry to perform skilled or unskilled labor admissible unless Secretary of Labor certifies that there are sufficient laborers in the United States	• Aliens seeking entry to perform skilled or unskililled labor excludable unless Secretary of Labor determines that there are not sufficient laborers in the United States	• Minor change, Secretary of Labor must determine "equally qualified" workers are available in U.S. to deny labor certification to members of teaching profession or those with exceptional ability in the arts and sciences	• No consensus was reached on the choice between a streamlined certification process (1965 law as amended in 1976) and a simplified procedure (similar to 1952 law) without a job offer requirement
PROVISIONS FOR ADJUSTMENT OF STATUS TO PERMANENT RESIDENT	• Aliens subject to deportation could be adjusted under certain circumstances	• Adjustments for narrowly defined groups of bona fide nonimmigrants (groups expanded in 1958 and 1960).	• Adjustment for aliens inspected and admitted for temporary purposes or paroled • Excluded natives of Western Hemisphere from adjusting status • Excluded crewmen from adjusting status	• Restored adjustment of status of natives of Western Hemisphere • Excluded aliens transiting without visas from adjusting status and aliens who had worked without authority, with certain exceptions	• No change
PROVISIONS FOR ADMISSION OF REFUGEES	• Entry permitted of otherwise excludable aliens if political offenders or victims of religious persecution	• Special legislation required • Attorney General's parole authority (not intended for this purpose)	• 7th preference provides conditional entry for up to 10,700 persons fleeing Communist or Middle Eastern countries • Parole authority or special legislation required in Western Hemisphere or for emergency situations	• 7th preference extended to both hemispheres • Parole authority or special legislation still required in certain situations[3]	• The Commission voted to endorse the provisions of the Refugee Act relating to the admission of refugees[3]

SOURCE: Departments of Justice, Labor and State, Interagency Task Force on Immigration Policy Staff Report, March 1979, except for Recommendations of the Select Commission.

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[1] Further amended in 1977 and by the Refugee Act of 1980. Also, an additional ground excluding certain persons who engaged in persecution under the Nazi government of Germany was added in 1978.

[2] On October 5, 1978, hemisphere ceilings were abolished and a worldwide ceiling of 290,000 was established. Refugee Act of 1980 reduced worldwide ceiling to 270,000 and reallocated 6% visas from 7th to 2nd preference.

[3] The Refugee Act of 1980 abolished the seventh preference and included the following provisions for the admission of refugees:

- Uniform definition of refugee without geographical or ideological biases
- Annual determination of refugee numbers by the President, after consultation with the Congress
- Maximum limit of 50,000 refugees per year, except when justified by the national interest or unforeseen circumstances
- Parole authority exercised only when required by "compelling reasons in the public interest"

APPENDIX E

THE ROLE OF THE FEDERAL GOVERNMENT IN IMMIGRATION AND REFUGEE POLICY

FEDERAL AGENCY	IMMIGRANTS		REFUGEES
	BORDER & PORTS OF ENTRY	INTERIOR	
Department of State	Bureau of Consular Affairs--visa issuance (in embassies and consular posts outside United States).		Office of U.S. Coordinator for Refugee Affairs--policy coordination and guidance for refugee programs. Bureau of Refugee Programs--development, implementation and operation of refugee programs, including overseas processing.
Department of Justice	Immigration and Naturalization Service--inspection of persons entering to determine admissibility; deterrence of illegal entry; apprehension of undocumented aliens.	Immigration and Naturalization Service--adjudication of requests for benefits; examination for naturalization; apprehension and removal of undocumented aliens.	Immigration and Naturalization Service--overseas screening of refugees prior to entry into the United States; change of refugee status to permanent resident alien.
	Drug Enforcement Administration--liaison with INS on drug smuggling and on undocumented aliens' activity.	Board of Immigration Appeals--final administrative review of certain INS decisions.	
Health and Human Services	Public Health Service--screening of foreign nationals for visa issuance and admission to the United States.		Office of Refugee Resettlement--aids in refugee resettlement through implementation of existing federal programs. Public Health Service--health screening of refugees.
Department of Labor		U.S. Employment Service--provides employment services to migrant and seasonal workers. Division of Labor Certification--certifies that the immigration of certain workers will not adversely affect U.S. labor market.	U.S. Employment Service--provides employment assistance to refugees through state employment agencies.

Department of Labor (continued)		Employment Standards Administration, Wage and Hour Division--administers Fair Labor Standards Act, with program targeting suspected employers of undocumented/illegal aliens, and Farm Labor Contractor Registration Act, which prohibits knowing employment of illegal aliens.	
Department of Education			Transition Program for Refugee Children--provides federal funds for language instruction to refugee children. Adult Education for Immigrants and Indochinese Refugees--provides funds for project to teach basic skills to immigrants.
Department of Agriculture	Animal, Plant Health Inspection Service--inspects plant and animal products and does some cross-designated inspections of persons.		
Department of Commerce		U.S. Travel Service--promotes international travel to the United States.	
Department of Transportation	U.S. Coast Guard--enforces laws on high seas in U.S. waters, including prevention of alien smuggling.		
Department of the Treasury	U.S. Customs Service--cross-designated inspections of persons for admissibility and cooperative prevention of illicit entry of persons and goods.	Internal Revenue Service, Office of International Operations--sees that permanent resident aliens file tax returns before leaving country.	
Other			State governments--work with HHS to plan and manage refugee programs; coordinate federal and state programs with other public and private resettlement programs.

APPENDIX F

THE U.S. REFUGEE PROGRAM: RESETTLEMENT NEEDS AND INITIATIVES UNDERTAKEN

NEEDS	INITIATIVES
Refugee policy and admissions levels	
Definition of refugee	Refugee Act of 1980 defines a refugee as "a person outside his/her country of nationality, or if he/she has no country of nationality the country in which he/she last habitually resided, who is persecuted or has a well-founded fear of persecution on the grounds of race, religion, nationality, membership in a particular social group or political opinion."
Need for systematic procedures for refugee admissions and the determination of admissions level	Refugee Act of 1980 provides for a normal flow of 50,000 refugees per year (until 1982) and provides procedures by which the President, in consultation with Congress, can increase that number.
Improvements in the admissions process	
Increased staff to handle processing in first-asylum camps	The Immigration and Naturalization Service (INS), the voluntary agencies (in their capacity as Joint Voluntary Agency Representatives), and the Department of State (staff in U.S. embassies) all increased their overseas staffs to handle the processing of greater numbers of refugees.
Improvements in medical screening overseas	The United States Public Health Service (PHS) has taken a number of initiatives in this area: * increased PHS personnel in transit centers * monitoring and developing medical screening procedures * developing immunization programs in the transit centers * improving the flow of medical records from transit centers and first-asylum camps to the United States.
Standardization of complete medical examination upon arrival in community of resettlement	PHS, especially via the Center for Disease Control (CDC), has taken a number of initiatives to improve initial health screening as well as general refugee health care, among which are the following: * recommendations to state and local health departments on essential services to be provided to refugees * grant program, administered by CDC and funded by the Office of Refugee Resettlement (ORR), to help states and communities; awarded $4.8 million in fiscal year 1980 * Bureau of Medical Services and Bureau of Community Health Services of the Health Services Administration have had significant involvement in refugee health care * the Refugee Act requires that states include in their federal funding proposals a plan to identify refugee health problems at the time of resettlement
System for the distribution of medical records to state and local health authorities	PHS has implemented such a system for the notification of local health authorities concerning initial refugee arrivals and the forwarding of medical records. The Refugee Act requires that the Secretary of Health and Human Services (HHS) "assure that state or local health officials at the resettlement destination...[are] provided with all applicable medical records."
Development of a placement strategy that takes into account local impact and refugee needs	The Cambodia Association of America has received a grant to work with the American Council of Voluntary Agencies (ACVA) to identify sites with good prospects for resettlement of new arrivals.
Upgrading of services to aid in resettlement	
Programs of orientation and language training in first-asylum camps	Overseas language training and orientation is planned for a number of refugee camps and processing centers in Southeast Asia. At least seven agencies and organizations with expertise in English as a Second Language (ESL) and orientation are under contract with UNHCR to provide these services in camps in Thailand, Hong Kong and the Philippines. These programs will be coordinated through the newly created Southeast Asia Resource Center, established specifically to serve as a link between these programs. The Resource Center (a project of the Center for Applied Linguistics) will also provide orientation and ESL materials to each of the individual programs.

NEEDS	INITIATIVES
Expanded sponsor orientation and training	The voluntary agencies have increased their efforts to provide sponsor orientation and training. (Such services are specified in the contracts between the agencies and the State Department--specifically, the provision of orientation materials to sponsors before and after the arrival of refugees, and an explanation of the resettlement process and the sponsor's role.) The Orientation Resource Center, an ORR National Demonstration Project, has been established to provide orientation and cross-cultural information to sponsors to facilitate effective refugee resettlement. It will establish a hotline to provide immediate orientation information and referral and will write and disseminate bilingual, culturally appropriate orientation materials to sponsors and their communities.
Increased capacity of programs to meet the special needs of refugees (such as, English as a Second Language, vocational training, job placement services, physical and emotional health care services, social adjustment services)	Voluntary agencies and the public sector have both been involved in expanding these services for refugees. Required core services are outlined in the State Department's contracts with the voluntary agencies; these include reception arrangements, as well as orientation, health, employment, ESL and social adjustment services. ORR has funded an expansion of services under Title XX of the Social Security Act, as well as a number of new projects to provide national backup and support to local delivery of services. Among these National Demonstration Projects are the following: • National Indochinese Clearinghouse and Technical Assistance Center--increased funding to provide ESL materials and technical assistance. • Practitioner Workshop Project--to provide models of effective programs for state administrators involved in the provision of social services. • Mutual assistance association grants--to provide services to build the organizational skills of refugee community leaders and organizations and support their provision of refugee services. • The Orientation Resource Center and the ACTION Project will provide training and technical assistance to local social service providers. The Department of Education has expanded its program of Adult Education for Immigrants and Indochinese Refugees and revised the Transition Program for Refugee Children. It has also adapted its Bilingual Education and Bilingual/Vocational Education programs to meet the needs of refugees. The Department of Labor, especially the Employment and Training Administration (ETA), has taken initiatives to encourage the participation of Indochinese refugees. The Comprehensive Employment and Training Act (CETA) program and Job Corps have been adapted to meet refugee needs in certain communities. Use has been made of the Targeted Jobs Tax Credit program.
Greater attention to special needs of refugee children and youth (especially unaccompanied minors)	The Refugee Act clarifies the previously unclear issues concerning legal responsibility for unaccompanied minors. (The educational needs of children and youth are the concern of the Transition Program for Refugee Children, noted above.)
Attention to refugee need of adequate low-cost housing	No major initiatives have been taken in this regard at the time of writing.
Improvement of the mechanisms for federal support	
Establishing the federal commitment to program and funding continuity	The Refugee Act authorizes resettlement grants and contracts for fiscal years 1980, 1981 and 1982. The Office of Refugee Resettlement of HHS is authorized to provide up to 100 percent of the cash and medical assistance of refugees during the first 36 months of resettlement.
Specific enumeration of obligations in State Department reception and placement contracts with voluntary and state resettlement agencies ,	In the summer of 1980, the State Department and the resettlement agencies renegotiated the terms of their contracts. A specific enumeration of required core services and optional services is included in these contracts.
Improvement of mechanisms for the monitoring and evaluation of services provided under federal grants and contracts	The Refugee Act requires the Secretary of HHS and the Secretary of State to develop systems to monitor federal grants and contracts for refugee assistance, including program evaluations and financial auditing. Reporting requirements for states have been outlined in the ORR regulations in the *Federal Register*.
Procedures for policy input by the public, voluntary agencies, state officials and others involved in refugee resettlement	ORR regulations require the creation of state advisory councils composed of refugees, representatives from local government, voluntary agencies, service providers and other private organizations.

APPENDIX F (continued)

THE U.S. REFUGEE PROGRAM: RESETTLEMENT NEEDS AND INITIATIVES UNDERTAKEN

NEEDS	INITIATIVES
	In addition, the Refugee Act requires that the U.S. Coordinator for Refugee Affairs "consult regularly with States, localities, and private nonprofit voluntary agencies concerning the sponsorship process and the intended distribution of refugees." The Act also requires "the development of an effective and responsive liaison between the Federal Government and voluntary organizations, Governors and mayors, and others involved in refugee relief and resettlement work to reflect overall United States Government policy."
Increased coordination of agencies and organizations involved in resettlement	
Coordination among federal agencies	Coordination of all federal programs and activities on behalf of refugees is one of the central responsibilities of the Office of the U.S. Coordinator for Refugee Affairs, as mandated by the Refugee Act of 1980. The Office carries out its role of policy coordinator through the Interagency Committee for Refugee Affairs, which meets regularly under the chairmanship of the Coordinator. The Committee consists of all federal agencies involved in domestic refugee programs, including the Departments of Health and Human Services, Housing and Urban Development, State, Labor, Justice and Education.
Coordination at the national level, among federal agencies, voluntary agencies, National Demonstration Projects and private organizations assisting in domestic resettlement	A portion of this coordination function is carried out by the Office of the U.S. Coordinator for Refugee Affairs. Although there is no central, national coordinating mechanism which meets on a regular basis, consultation and liaison functions described above contribute significantly to coordination.
Coordination at the state level	Many states have, during the past year, established coordinating mechanisms or increased the effectiveness of existing mechanisms. ORR regulations require the designation of a State Coordinator in each state to ensure coordination of public and private resources in refugee resettlement. In addition, the state advisory councils (described under "Procedures for policy input...") contribute to coordination at the state level.
Coordination at the local level	Local forums or coordinating councils have been established in numerous communities to facilitate coordination at the local level.
Coordination among the national, state and local governments and organizations	The majority of the mechanisms described above are meant to create the essential linkages between the national, state and local levels. Among the key agencies and structures designed to create this linkage are: The Office of U.S. Coordinator for Refugee Affairs, ORR's regional offices, the State Coordinator and state advisory councils and a number of the National Demonstration Projects funded by ORR (especially ACVA's Information Analysis and Coordination Center).
Information needs	
Increased information targeted to the local levels, especially:	ORR has funded a number of major initiatives in this area:
• Orientation materials for refugees, sponsors and local social service providers • Information on available federal programs and national resources to aid in local resettlement	• A national Orientation Resource Center, operated by the Center for Applied Linguistics, will provide orientation and cross-cultural information to refugees and their sponsors, voluntary agencies, local social service providers and mutual assistance associations. • Expansion of the American Public Welfare Association's Information Exchange Project. This organization publishes Refugee Reports, a biweekly publication containing news, analyses of federal programs and legislation and discussions of refugee-related issues. It is a major resource on all facets of domestic resettlement. It also publishes the Journal of Refugee Resettlement. • An Information Analysis and Coordination Center for the National Voluntary Resettlement Agencies, an ORR-funded National Demonstration Project established by ACVA, which, among other functions, will provide information targeted to the local resettlement network. • The National Indochinese Clearinghouse and Technical Assistance Center (NICTAC), which provides services and materials to ESL programs, teachers and school systems.

NEEDS	INITIATIVES
	A number of additional ORR National Demonstration Projects provide information services, including the Indochina Refugee Action Center's Practitioner Workshop Project which publishes a series of updates to the Refugee Resettlement Resource Book: A Guide to Federal Programs and National Support Projects to Assist in Refugee Resettlement, published jointly by the Office of the U.S. Coordinator for Refugee Affairs and ORR.
Provision of information to state and local officials, especially concerning the number of refugees resettling in their jurisdictions and federal programs available to aid in refugee resettlement	ORR has funded, in addition to information sources listed above, National Demonstration Projects targeted specifically to the needs of state and local officials: • The National Governor's Association Center for Policy Research project will provide technical assistance and a forum for information exchange for state and local officials. • The United States Conference of Mayors project will aid in the dissemination of technical information pertinent to the needs of the cities and facilitate information exchange between federal and local officials. • The National Association of Counties project will establish a clearinghouse for the collection and dissemination of information on refugees to county governments. In addition, ACVA is compiling and distributing data on the numbers of Indochinese refugees arriving in over 500 cities. (This report is called "Sponsorship Assurances and Arrivals by City/State.")
Development of national data collection and analysis	ORR is currently in the process of unifying its several sources of computerized data on refugees and refugee programs. ORR is also increasing its capacity to use this data for statistical reporting, program planning and social studies on refugee adjustment. By computer linkups with HHS's regional offices, ORR regional coordinators will also have access to this data. ACVA is compiling and distributing data on the numbers of Indochinese refugees arriving in over 500 cities. (This report is called "Sponsorship Assurances and Arrivals by City/State.")
Indochinese participation in the resettlement process	
Enhancement of the capacity of refugee mutual assistance association (MAA's/self-help groups) to serve the needs of their communities	ORR has recently granted $1.2 million to more than 25 MMA's (see description under "Upgrading of Services..."). In addition, ORR has funded the Cambodian Association of America to help with the resettlement of 10,000 Cambodians who will arrive in the United States during the fiscal year 1981. Also, through an interagency agreement with ORR, ACTION has instituted a project which involves training and technical assistance to MAA's.
Increasing involvement of Indochinese refugees as staff members in public and private resettlement organizations	There have been efforts on the part of a number of organizations and agencies to respond to this need.
Initiatives to address the problem of community tensions	The Community Relations Service has responded during the past year to 18 conflict situations in which tensions were related to the resettlement of refugees. CRS uses conciliation and/or mediation in its efforts to settle differences and seeks voluntary action to resolve disputes. It also provides technical assistance to public and private organizations in their efforts to resolve community tension problems. Two agencies of the Department of Commerce--the National Marine Advisory Service and the Minority Business Development Agency--have attempted to help alleviate community tensions that have arisen on the Texas Gulf Coast. The U.S. Community Service Administration has funded a project that developed in response to a community tensions conflict that erupted last year in Denver. This undertaking, the Multi-Ethnic Communications Project, has attempted to enhance communications, cooperation and intergroup relations between Indochinese and other minorities in the Denver area.

APPENDIX G

RESEARCH CONTRACTS AND PAPERS PREPARED FOR THE SELECT COMMISSION

AUTHOR	TOPIC
Research Contracts	
Frank D. Bean University of Texas at Austin	Patterns of Fertility Variation Among Mexican Immigrants to the United States
Josefina Jayme Card American Institute for the Behavioral Sciences	Migration Intentions and Migration Behavior--A Longitudinal Study of Filipino Graduate Students
John Garcia Survey Research Center University of Michigan	Civic Participation of Mexican Immigrants
David Goldberg Population Studies Center University of Michigan	Cross-Cultural Comparison of Mexican-Americans, Mexican Nationals, and Non-Mexican-Americans--A Detroit Case Study
Larry Neal Office of West European Studies University of Illinois at Urbana-Champaign	Interrelationships of Trade and Migration--Lessons from Europe
Louka Papaefstratiou Economic Growth Center Yale University	Trade Flows and Factor Mobility
Guy Poitras Border Research Institute Trinity University	The United States Experience of Return Migrants from Costa Rica and El Salvador
T. Paul Schultz Economic Growth Center Yale University	School Achievements and Health Status of Children of Migrants
Julian Simon University of Illinois at Urbana-Champaign	The Comparative Use of Governmental Social Programs by Immigrants and Natives

AUTHOR	TOPIC
Research Contracts (continued)	
Rita Simon University of Illinois at Urbana-Champaign	Social-psychological Adjustment and Acculturation of Adolescent Children of Immigrant Families
Nelle Temple Overseas Development Council	Economic Cooperation Programs and Restraint of Flow of Migration
Kenneth Wolpin Economic Growth Center Yale University	The Structure of Households of Immigrants and Natives
Andrea Tyree S.U.N.Y. at Stony Brook	Crossnational Determinants of Immigration to the United States
Jenna Weissman Joselit Columbia University	The History of Immigrants and Health Issues in the United States
Thomas Kessner C.U.N.Y.	The History of Return Migration of Immigrants
Allen Steinberg Columbia University	The History of Immigrants and Health Issues in the United States
Susan Forbes, Historical Consultants, and Peter Lemos, C.U.N.Y.	The History of American Language Policy and Immigration
William Lewis George Washington University	International Refugee Mechanisms
Norman Zucker Brookings Institution	Voluntary Agencies--Resettlement Philosophy and Capability
Barry Stein Michigan State University	Refugee Resettlement Programs--Services and Policies
Notre Dame University Law School-Center for the Study of Human Rights	Parole Authority--Process and Standards Immigration Law Research--Indian Treaties and Law Immigration Law Research--Refugee Act of 1980

APPENDIX G (continued)

AUTHOR	TOPIC
Research Contracts (continued)	
David S. North New TransCentury Foundation	Enforcing the Immigration Law: A Review of the Options
Volunteered Research	
Notre Dame University Law School-Center for the Study of Human Rights	Federal Preemption Employer Sanctions
Alien Rights Project of the National Lawyers' Committee for Civil Rights	Variety of Papers on Legal Topics
Consultation Papers and Written Testimony	
Michael Maggio, Esq. Attorney-at-Law	Written Statement on Immigrant Workers and Migration from the Caribbean
D. Elliot Parris Howard University	The Contributions of the Caribbean Immigrant to the United States Society
Claudwell Thomas New Jersey Medical School	The Impact of Caribbean Immigration on U.S. Urban Institutions
Wayne A. Cornelius Program in U.S.-Mexican Studies University of California at San Diego	Legalizing the Flow of Temporary Migrant Workers from Mexico: A Proposal
David Gregory Inter-American Council on Manpower and Development, Inc.	A Mexican Temporary Workers Program: The Search for Codetermination
Richard Mines University of California at Berkeley	A Temporary Work Permit Program for Mexicans

AUTHOR	TOPIC
Consultation Papers and Written Testimony (continued)	
Edwin P. Reubens Center for Philosophy and Public Policy University of Maryland	Immigration Problems, Limited-visa Programs and Other Options
Sidney Weintraub University of Texas at Austin	A Proposal to Phase Out United States Use of Foreign Temporary Workers
Anne Ehrlich Stanford University	The Environmental Impact of Immigration
M. King Hubbert	Immigration and Global Energy, Natural Resources--The World's Evolving Energy System
David Pimentel Cornell University	Land, Water and Energy Resources: Food and Immigration Policies
Roger Revelle University of California at San Diego	Migration: A Positive Effect on Resources
Colleen Shearer Iowa Refugee Service Center	Testimony on Refugee-Related Issues
Edwin B. Silverman Refugee Resettlement Programs Illinois Department of Public Aid	Testimony on Refugee-Related Issues
Ned Whitehead Whitehead and Company	Identification Card and Method (copy of patent application)
Carlos E. Cortes University of California at Riverside	Education of Immigrants and Refugees
Jean D. Grambs University of Maryland	Written Observations of Education Consultation

APPENDIX G (continued)

AUTHOR	TOPIC
Consultation Papers and Written Testimony (continued)	
Nancy B. Wyner Wheelock College	Written Observations of Education Consultation
Robert Juceam American Immigration and Nationality Lawyers	The Lottery System
William Overholt	A Global Survey of Political-Economic Tensions Which Could Stimulate Refugees or Rapid Migrations
Charles Keely Population Council	Ceilings, Quotas and National Origins
	Notes on International Migration and International Relations
Agency Papers Prepared for Commission	
Department of Labor	Keeping Undocumented Workers Out of the Workforce: Evalutation of Alternative Strategies and Costs of Alternative Work Permit System (David North)
Department of Labor Office of Foreign Economic Research	The Economic Implications of Immigration: Labor Shortages, Income Distribution, Productivity and Economic Growth (Kyle Johnson and James Orr)
	Abstracts of Funded Research (Marion Houstoun)
State Department (Agency for International Development/International Development Cooperation Agency)	Impact of Development Assistance, Trade and Investment Programs on Migration Pressures in Major Sending Countries

AUTHOR	TOPIC
Agency Papers Prepared for Commission (continued)	
Immigration and Naturalization Service	State and Local Law Enforcement Officers and Immigration Law
	Administrative Naturalization
	Temporary Alien Workers on Guam
Department of Health and Human Services	Abstracts of Funded Research (Karen Deasy)
Library of Congress	Selected Readings on U.S. Immigration Policy and Law
	Temporary Worker Programs: Background and Issues
	History of the Immigration and Naturalization Service
Bureau of the Census	Estimating the Illegal Alien Population

APPENDIX H

SELECT COMMISSION BRIEFING AND BACKGROUND PAPERS

Briefing and background papers prepared for the Select Commission on Immigration and Refugee Policy are listed under three headings below. Commission papers and memoranda on these subjects also are included.

Numbers and Sources

Immigrants: How Many?
Preliminary Review of Existing Studies of the Number of Illegal Residents in the United States
Non-Immigrant Visitors in the United States
From Where? Regional and/or National Geographic Ceilings on Visa Allocations
Memorandum on Emigration
Notes on International Migration and International Relations

Goals and Criteria for Selection

Immigration Targets and Flexibility: Managing the Flow of Immigrant Characteristics
Restructuring the Preference System: Goals, Categories, Immigrants, and Refugees
Immigration Criteria for Non-Immediate Relatives of United States Residents
Selection of Independent Immigrants to the United States: Alternative Systems
The Immigration Preference System and Family Reunification Policy
Criteria for Choosing Independent Immigrants

The Impact of Immigrants, Documented and Undocumented

The Acculturation and Economic Integration of Immigrants and Refugees
Naturalization: Procedures, Trends, and Policy Choices
Immigration Policy, Economic Growth, and Employment
Labor Certification for Immigrants
The Economic Impacts of Illegal Migrants
Rights and Entitlements of Illegal Migrants
The United States Economy and the Illegal Migrant
Protective Labor Laws and Illegal Migrants
Current Laws Inhibiting the Employment of Undocumented Alien Workers in the United States
INS Border Enforcement Procedures
Countering Illegal Immigration: A National Work Authorization Card
Inhibiting Illegal Migration: Employment Eligibility and Employer Responsibility
Legalization of Status for Illegal Migrants Under the Current Law
Illegal Migrants: What Do We Do About Those Who Are Already Here?
Temporary Foreign Workers in the United States: The H-2 Program

APPENDIX I

DATES AND SITES OF REGIONAL HEARINGS HELD BY THE SELECT COMMISSION

CITY	DATE	CHAIRPERSON
Baltimore	October 29, 1979	Sen. Charles McC. Mathias and
Boston	November 19, 1979	The Reverend Theodore M. Hesburgh
Miami	December 4, 1979	Atty. Gen. Benjamin Civiletti
San Antonio	December 17, 1979	Commissioner Joaquin F. Otero
New York	January 21, 1980	Rep. Elizabeth Holtzman
Phoenix	February 4, 1980	Sen. Dennis DeConcini
Los Angeles	February 5, 1980	Commissioner Rose Matsui Ochi
Denver	February 25, 1980	Sen. Alan K. Simpson
New Orleans	March 24, 1980	The Reverend Theodore M. Hesburgh
Chicago	April 21, 1980	Rep. Robert McClory
Albany	May 5, 1980	Rep. Hamilton Fish, Jr.
San Francisco	June 9, 1980	Judge Cruz Reynoso

APPENDIX J

SELECT COMMISSION CONSULTATIONS AND PARTICIPANTS

IMMIGRATION POLICY GOALS, STRUCTURE AND CRITERIA--April 17, 1980

Sam Bernsen, Attorney, Fried, Fragomen, Del Rey, Bernsen and O'Rourke, Washington, D.C.
The Reverend Joseph Cogo, Director, American Committee on Italian Migration
Katherine Collins, Office of Management and Budget
Alexander Cook, Minority Counsel, House Judiciary Committee
Irene Cox, Department of Health and Human Services
Congressman Hamilton Fish, Jr. (R-New York)
Benjamin Gim, Attorney, Association of Immigration and Naturalization Lawyers
Antonia Hernandez, Counsel, Senate Judiciary Committee
Marion Houstoun, Office of Foreign Economic Research, Department of Labor
The Honorable John Jova, former Ambassador to Mexico
Rumaldo Juarez, Department of Health and Human Services
Charles Keely, The Population Council, New York
John Nahan, Director, Planning, Immigration and Naturalization Service
Lisa Petranek, Office of Congressman Robert McClory (R-Illinois)
Lupe Salinas, Office of the Attorney General, Department of Justice
James J. Schweitzer, Office of Congresswoman Elizabeth Holtzman (D-New York)
Cornelius D. Scully III, Acting Director, Office of Legislation, Regulation, and Advisory Systems, Visa Office, Department of State
Wray Smith, Department of Health and Human Services
Russ Serber, Office of the Counselor, Department of State
Deborah Swartz
Leonard F. Walentynowicz, Executive Director, Polish American Congress
Frank White, Associate Director, Domestic Policy Staff, The White House
Franklin Williams, President, Phelps Stokes Fund
Charles Wood, Legislative Assistant, Office of Senator Alan K. Simpson (R-Wyoming)
Beverly Zweiben, Special Asistant, Department of State

QUASI-JUDICIAL QUANDARIES: "OVER DUE PROCESS"--April 24, 1980

The Honorable Irving A. Appleman, Board of Immigration Appeals
Jonathan Avirom, Attorney
Sam Bernsen, Attorney, Fried, Fragomen, Del Rey, Bernsen, and O'Rourke, Washington, D.C.
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Edwin Chauvin, Association of Immigration Directors
Robert E. Coughlon, Immigration and Naturalization Service
Martin Danziger, Deputy Commissioner, Immigration and Naturalization Service
A. J. Del Rey, Jr., Chairman, Immigration Law Committee, Association of the Bar of the City of New York
David Dixon, Special Assistant to the Acting Commissioner, Immigration and Naturalization Service
The Honorable Ralph Farb, Board of Immigration Appeals
Congressman Hamilton Fish, Jr. (R-New York)
Benjamin Gim, Association of Immigration and Nationality Lawyers
Charles Gordon, Attorney, Carliner and Gordon, Washington, D.C.
Bill Ong Hing, Assistant Professor of Law, Golden Gate University, San Francisco, California
The Honorable Theodore P. Jakaboski, Immigration Judge, El Paso, Texas
Robert Juceam, Fried, Frank, Harris, Shriver, and Jacobson, New York
William Kenney, former Senior Adviser, International Affairs Unit, Department of Justice
Charles McCarthy, Immigration and Naturalization Service
Michael Maggio, Attorney
The Honorable Louis P. Maniatis, Board of Immigration Appeals
The Honorable David L. Milhollan, Chairman, Board of Immigration Appeals
The Honorable Joseph Monsanto, Immigration Judge
James P. Morris, Chief, Immigration Unit, Criminal Division, Department of Justice
Jan M. Pederson, Attorney, Cramer and Lipsen, Washington, D.C.
The Honorable Cruz Reynoso, Associate Justice, Court of Appeals, Third Appellate District
Charles Sava, Associate Commissioner, Enforcement, Immigration and Naturalization Service
Paul W. Schmidt, Jr., Deputy General Counsel, Immigration and Naturalization Service
Jerry Serviss, Attorney, Barst and Mukamal
Bernard Soberman, Immigration and Naturalization Service
Fred W. Vacca, Executive Director, Board of Immigration Appeals
Paul C. Vincent, Chief Trial Attorney, Immigration and Naturalization Service
Earl Wack, Immigration and Naturalization Service

APPENDIX J (continued)

ILLEGAL MIGRANTS: WHAT DO WE DO ABOUT THOSE WHO ARE ALREADY HERE?--May 1, 1980

Peter Allstrom, Food and Beverages Trade Department, AFL-CIO
Katherine Collins, Office of Management and Budget
Jose Contreras, Executive Director, Camino Real Health Planning Agency, San Antonio, Texas
Alexander B. Cook, Minority Counsel, House Judiciary Committee
Irene Cox, Department of Health and Human Services
Barney Dusenberry, Senate Judiciary Committee
Josephine Gonzales, Attorney, Los Angeles, California
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Marion Houstoun, Office of Foreign Economic Research, Department of Labor
Patricia Johnson, National Association of Counties, Washington, D.C.
Rumaldo Juarez, Department of Health and Human Services
Harry Klajbor, Deputy Assistant Commissioner, Adjudications, Immigration and Naturalization Service
Roger Lucas, Immigration and Naturalization Service
Timothy McPike, Deputy Counsel, Senate Judiciary Committee
Doris Meissner, Deputy Associate Attorney General, Department of Justice,
John Nahan, Director, Planning, Immigration and Naturalization Service
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Joe Pollard, Washington Office of Los Angeles County, California
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Peter Regis, House Judiciary Committee
Yolanda Sanchez, Immigration and Naturalization Service
Jerry Tinker, Counsel, Senate Judiciary Committee
L. A. Verlarde, Regional Director, Migration and Refugee Services, El Paso, Texas
Robert Warren, Bureau of the Census
Frank White, Associate Director, Domestic Policy Staff, The White House
Burdette Wright, Washington Office of Los Angeles, California

NONIMMIGRANTS--May 20, 1980

Stuart Baker, Special Assistant to the Secretary, Department of Education
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Joseph A. Blunden, International Communication Agency
Ray L. Casterline, Executive Director, Education Council for Foreign Medical Graduates
Joseph Evans, American College of Surgeons
Charles McCarthy, Deputy Assistant Commissioner for Adjudications, Immigration and Naturalization Service
Elaine Manen, National Association of Foreign Student Advisors
Francis P. Murphy, Deputy Assistant Commissioner for Inspections, Immigration and Naturalization Service
John Nahan, Director, Planning, Immigration and Naturalization Service
Ron Reafs, International Communication Agency
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OPERATIONS AND STRUCTURE--May 22, 1980

Sam Bernsen, Attorney, Fried, Fragomen, Del Rey, Bernsen, and O'Rourke, Washington, D. C.
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Marvin Gibson, Assistant Commissioner, Inspections, Immigration and Naturalization Service
James F. Greene, former INS Deputy Commissioner
Michael Harpold, President, INS, National Council, AFGE, San Francisco, California
Gary Hays, Police Executive Research Forum
Marcel Hills, Senior Analyst on the INS Account, Department of Justice
Bill Ong Hing, Assistant Professor of Law, Golden Gate University, San Francisco, California

APPENDIX J (continued)

Harry Klajbor, Deputy Assistant Commissioner, Adjudications, Immigration and Naturalization Service
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Steven Mukamal, Barst and Mukamal, New York
Peter Murphy, Special Assistant to the Assistant Secretary for Consular Affairs, Department of State
John Nahan, Director, Planning, Immigration and Naturalization Service
David North, Director, Center for Labor and Migration Studies, New TransCentury Foundation, Washington, D.C.
Robert Robinson, Director, ADP Systems Branch, Immigration and Naturalization Service
Jack Shaw, Department of Justice
Keith Williams, Acting Assistant Commissioner for Naturalization, Immigration and Naturalization Service

IMPORTANT CHANGES IN U.S. IMMIGRATION LAW---May 28, 1980

David Carliner, Attorney, Carliner and Gordon, Washington, D. C.
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Mark Mancini, Wasserman, Orlow, Ginsburg, and Rubin, Washington, D.C.
Juan Mendez, Washington Lawyers' Committee, Washington, D.C.
James P. Morris, Chief, Immigration Unit, Criminal Division, Department of Justice
William Odencrantz, Regional Counsel, Western Region, Immigration and Naturalization Service

ILLEGAL MIGRANTS:INHIBITING FUTURE FLOWS--May 29, 1980

Peter Allstrom, Food and Beverage Trade Department, AFL-CIO
Ken Bell, Temporary Alien Labor Agricultural Task Force, Department of Labor
Glen Bertness, Assistant Commissioner for Investigations, Immigration and Naturalization Service
Roger Brandemuehl, Assistant Commissioner, Border Patrol, Immigration and Naturalization Service
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Herbert Cohen, Wage and Hour Division, Department of Labor
Alexander Cook, Minority Counsel, House Judiciary Committee
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Lisa Petranek, Office of Congressman Robert McClory (R-Illinois)
Eugene Pugliese, Assistant Counsel, House Judiciary Committee
L. A. Velarde, Regional Director, Migration and Refugee Services, United States Catholic Conference, El Paso, Texas

REFUGEE-RELATED ISSUES--June 4, 1980

Amy Anawaty-Young, Executive Director, International Human Rights Legal Group, Washington, D.C.
Larry Arthur, Bureau of Human Rights and Humanitarian Affairs, Department of State
Nguyen Ngoc Bich, Vietnamese Resource Specialist, Intake Center, Arlington, Virginia
Hank Cushing, Acting Director, Office of Asian Refugees, Department of State
Laura DeKoven Waxman, United States Conference of Mayors
Amitai Etzioni, Senior Advisor to the Special Assistant to the President for Information Management, The White House
John Hansan, Executive Director, National Conference on Social Welfare
Phil Holman, Special Assistant to the Director of Policy and Analysis, Office of Refugee Resettlement, Department of Health and Human Services
Pat Johnson, National Association of Counties

APPENDIX J (continued)

Wells Klein, Executive Director, American Council for Nationalities Services
Bruce Leimsidor, Hebrew Immigrant Aid Society
Ambassador Frank Loy, Deputy United States Coordinator for Refugee Affairs
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James P. Morris, Criminal Division, Department of Justice
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John Scanlon, Center for the Study of Human Rights, The University of Notre Dame
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Barry Stein, Michigan State University
Robert Jay Stein, Director, Indochina Refugee Action Center
Jerry Tinker, Counsel, Senate Judiciary Committee
Emily Young, National Governors' Association
Norman Zucker, University of Rhode Island

CARIBBEAN IMMIGRATION TO THE UNITED STATES--June 20, 1980

Richard Archi, Agency for International Development
Karen Avery
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Roy Bryce-Laporte, Smithsonian Institution
Elsa Chaney, Washington, D.C.
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Sergio Diaz, Population Reference Bureau
Nancy Frank, Department of State
Richard Graham, Office of Refugee Affairs, Department of State
Marion Houstoun, Office of Foreign Economic Research, Department of Labor
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Aida Reyes, Special Assistant to Congressman Baltasar Corrada (D-Puerto Rico)

Lupe Salinas, Office of the Attorney General, Department of Justice
Dina V. Sama
Claudwell Thomas, Chairman, Department of Psychiatry, New Jersey Medical School
Katherine Williams, Howard University
Walter Williams, Caribbean Development Council
Hilbourne Watson, Howard University

IMMIGRATION PROBLEMS OF THE TERRITORIES--June 26, 1980

James Beirne, Senate Energy Committee
Aaron Bodin, Chief, Division of Labor Certification, Department of Labor
Thomas Dunmire, House Committee on Interior and Insular Affairs
George Eustaquio, Office of Congressman Antonio B. Won Pat (D-Guam)
Congressman Melvin Evans (R-Virgin Islands)
Jeffrey Farrow, Domestic Policy Staff, The White House
Raul Gasteazoro, Office of Senator Dennis DeConcini (D-Arizona)
Tommye Grant, Acceptance Facilities and Insular Coordination Division, Office of Passport Services, Department of State
Wallace Green, Deputy Undersecretary for Territorial and International Affairs, Department of Interior
Marion Houstoun, Office of Foreign Economic Research, Department of Labor
Laura Hudson, Office of Senator J. Bennett Johnston (D-Louisiana)
Eni Hunkin, House Committee on Interior and Insular Affairs
Arnold Leibowitz, Vice President, Overseas Private Investment Corporation, Washington, D.C.
Charles McCarthy, Deputy Assistant Commissioner for Adjudications, Immigration and Naturalization Service
Herman Marcuse, Attorney Advisor, Office of Legal Counsel, Department of Justice
Nancy Meyer, Evaluations and Standards Division, Office of Passport Services, Department of State
Richard Miller, Policy Planning, Office of Territorial and International Affairs, Department of Interior
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APPENDIX J (continued)

Cornelius D. Scully III, Director, Office of Legislation, Regulations, and Advisory Systems, Visa Office, Department of State
Peter Sheridan, Library of Congress
Carl Spatz, Office of Congressman Antonio B. Won Pat (D-Guam)
Fofo Sunia, Delegate-at-Large to the United States from American Samoa
Malaitasi Togafau, Office of American Samoa
Joyce Vialet, Library of Congress
Congressman Antonio B. Won Pat (D-Guam)

CIVIC AND LANGUAGE EDUCATION OF IMMIGRANTS AND AND REFUGEES--July 1, 1980

James Alatis, Dean of the School of Language and Linguistics, Georgetown University, and Executive Secretary-Treasurer, TESOL
Jim Bauman, Consultant, Center for Applied Linguistics
Henry Der, Executive Director, Chinese for Affirmative Action, San Francisco
Esther J. Eisenhower, English as a Second Language Program Specialist, Fairfax County Public Schools, Virginia
Carlos Cortes, Professor of History, University of California, Riverside
E. B. Duarte, Director, Outreach Program, Immigration and Naturalization Service
Josue Gonzalez, Director of the Office of Bilingual Education and Minority Affairs, Department of Education
Jean Grambs, Professor, Institute for Child Study, University of Maryland
Tracy Gray, Director, Office of Language and Public Policy, Center for Applied Linguistics
John Kromkowski, President, National Center for Urban Ethnic Affairs
Wallace Lambert, Professor, Psychology Department, McGill University
Jack Levy, Senior Program Officer, Bilingual Education, Department of Education
Lam Phan, Office of Refugee Resettlement, Department of Health and Human Services
Eileen Schlef, Program Officer for Adult Vocational Education, Department of Education
Susan Thomas, Project Director, Education Development Center, Newton, Massachusetts
Leonard Walentynowicz, Executive Director, Polish American Congress
Keith Williams, Acting Assistant Commissioner for Naturalization, Immigration and Naturalization Service
Charles Wood, Legislative Assistant, Office of Senator Alan K. Simpson, (R-Wyoming)
Nancy Wyner, Assistant Professor of Early Childhood Education, Wheelock College, Boston

IMMIGRATION AND RESOURCES--July 9, 1980

Mike Brewer, National Agricultural Lands Survey, Washington, D.C.
Roger Connor, Federation for American Immigration Reform, Washington, D.C.
Richard Corrigan, Agenda for the 80's, Washington, D.C.
Phyllis Eisen, Zero Population Growth, Washington, D.C.
Ann Erlich, Stanford University
Earl Hayes
M. King Hubbert, ecologist and conservationist, Washington, D.C.
Earl Huyck, Behavioral Sciences Branch, CPR/NICHD, Washington, D.C.
Marvin Ott, Director, Congressional and Institutional Relations, United States Congress
David Pimentel, Cornell University
Roger Revelle, University of California
Ronald Ridker, Resources for the Future, Washington, D.C.

THE RELATIONSHIP OF IMMIGRATION TO ECONOMIC DEVELOPMENT AND PRODUCTIVITY--July 15, 1980

Aaron Bodin, Director, Labor Certification Program, Department of Labor
Mary Eccles, Joint Economic Committee, United States Congress
Audrey Freedman, The Conference Board, New York
Leonard Hausman, Brandeis University
Marion Houstoun, Office of Foreign Economic Research, Department of Labor
Guillermina Jasso, Select Commission on Immigration and Refugee Policy
Kyle Johnson, Department of Labor
Richard Johnson, Department of Commerce
Justin Klein, Presidential Exchange Executive GE/SEC
Ann Orr, United States Bureau of the Census
James Orr, Department of Labor
Paul Ostergard, GE-NAM/Employment Training Committee
Markley Roberts, Economist, AFL-CIO
Mark Rosenzweig, Select Commission on Immigration and Refugee Policy
Dan Saks, National Commission for Employment Policy
Isabel Sawhill, Urban Institute
Michael Teitelbaum, Ford Foundation
V.G. Whittington, Vice President Shell Oil Company, Business Roundtable Labor Management Committee
Harold Wool, The Conference Board, Washington, D.C.

APPENDIX J (continued)

IMMIGRATION AND THE PROTECTION OF THE U.S. LABOR FORCE--July 16, 1980

Aaron Bodin, Director, Labor Certification Program, Department of Labor
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Marion Houstoun, Office of Foreign Economic Research Department of Labor
Robert Juceam, Fried, Frank, Harris, Shriver, and Jacobson, New York
Kenneth Meiklejohn, Legislative Department, AFL-CIO
David North, Director, Center for Labor and Migration Studies, New TransCentury Foundation, Washington, D. C.
Ellen Sehgal, Acting Director, Division of Research Methods and Services, Department of Labor
Tom Simmons, Immigration Examiner, Immigration and Naturalization Service
Judy Sorum, Special Assistant to the Secretary, Department of Labor

SEASONAL WORKERS:NEED AND SUPPLY--July 21, 1980

Peter Allstrom, Food and Beverages Trades Department, AFL-CIO
Jack Angell, Director, Washington Office, American Farm Bureau Federation
Ken Bell, Temporary Labor Certification, Department of Labor
Patrick Burns, Zero Population Growth
Richard Cagan, Director, Washington Office, American Civil Liberties Union
The Reverend Peter N. Carundolo, Jesuit Social Ministries Office
Esther Chavez, Migrant Labor Action Program
Bob Costain, Department of Agriculture
Nicasio Dimas, Director, Washington Office, Mexican-American Legal Defense and Education Fund
Harold Edwards, British West Indies Committee
Phyllis Eisen, Zero Population Growth
Perry Ellsworth, Executive Vice President, National Council of Agricultural Employers
Congressman Hamilton Fish, Jr. (R-New York)
Kathy Gillespie, California Migrant Legal Action
Domingo Gonzalez, American Friends Service Committee
David Gregory, Inter-American Council on Manpower and Development, Dartmouth College
Chris Haines, Office of Congressman Norman Shumway (R-California)
Senator S.I. Hayakawa (R-California)
Antonia Hernandez, Senate Judiciary Committee
Conrad Hicks, Federation for American Immigration Reform
Don Hohl, District Director, Migration and Refugee Services, United States Catholic Conference
Marion Houstoun, Office of Foreign Economic Research, Department of Labor

Michael Ibarra, Mexican-American Legal Defense and Education Fund
Ron Jones, Department of Labor
Steven S. Karalekas, Charles, Karalekas, and Bacas
Congressman Daniel E. Lungren (R-California)
Philip Martin, Department of Agricultural Economics, University of California, Berkeley,
Evan Maxwell, Los Angeles Times
Doris Meissner, Deputy Associate Attorney General, Department of Justice
Richard Mines, Department of Agricultural Economics, University of California, Davis
Albert Missler, Attorney
John Nahan, Immigration and Naturalization Service
David North, Director, Center for Labor Migration Studies, New TransCentury Foundation, Washington, D.C.
Congressman Charles Pashayan, Jr. (R-California)
Michael Piore, Department of Economics, Massachusetts Institute of Technology
Edwin P. Reubens, Department of Economics, City University of New York
Kenneth Roberts, Center for Energy Studies, University of Texas, Austin
Steven Sandell, Department of Health and Human Services
Senator Harrison Schmitt (R-New Mexico)
Susan Sechler, Department of Agriculture
Ellen Sehgal, Department of Labor
Henry Shue, Center for Philosophy and Public Policy, University of Maryland
Doug Silver, Office of Congressman Phil Gramm
Thomas Simmons, Immigration and Naturalization Service
Leslie W. Smith, Department of Agriculture
George Sorn, Florida Fruit and Vegetable Growers
Judy Sorum, Department of Labor
Rick Swartz, Washington Lawyers' Committee for Civil Rights Under Law
Fred C. Thorpe, Chief, Price and Labor Branch, Department of Agriculture
Jerry Tinker, Counsel, Senate Judiciary Committee
Joyce Vialet, Library of Congress
Sidney Weintraub, Lyndon B. Johnson School of Public Affairs, University of Texas, Austin
Frank White, Associate Director, Domestic Policy Staff, The White House
Congressman Richard C. White (D-Texas)
Judy Wiessler, Houston Chronicle

APPENDIX J (continued)

SELECTING INDEPENDENT IMMIGRANTS--A POINT SYSTEM--September 9, 1980

E. Michael Berger, Attorney, Berger amd Winston, Montreal
Aaron Bodin, Chief, Division of Labor Certification, Department of Labor
Elizabeth J. Harper, Deputy Assistant Secretary of Visa Services, Department of State
Marion Houstoun, Office of Foreign Economic Research, Department of Labor
Robert Juceam, Fried, Frank, Harris, Schriver, and Jacobson, New York
Kenneth Meiklejohn, Legislative Department, AFL-CIO
Dan Saks, National Commission for Employment Policy
Cornelius D. Scully III, Director, Office of Legislation, Regulations, and Advisory Assistance, Visa Office, Department of State
Ellen Sehgal, Acting Director, Division of Research Methods and Services, Department of Labor
Wayne Slater, Counsellor (Immigration), Australian Embassy, Washington, D.C.
Charles Wood, Office of Senator Alan K. Simpson (R-Wyoming)

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